THE CITY OF SAN DIEGO

De Anza Harbor Resort Information

THE CITY OF SAN DIEGO

Tabel of Contents

FIRST AMENDMENT TO

PURDY-WITCHER "DE ANZA POINT TOURIST AREA" LEASE

THIS AGREEMENT, dated this 21st day of October, 1952, between THE CITY OF SAN DIEGO, a municipal corporation, in the County of San Diego, State of California, hereinafter called "Lessor" and M. F. PURDY and LILA WITCHER, hereinafter called "Lessee", WITNESSETH:

That for and in consideration of the mutual benefits to be derived from this amendment, it is agreed:

1. That that certain lease of the "De Anza Point Tourist Area" executed between the parties hereto on the 18th day of May, 1951, and filed with the City Clerk of said City as Document No. 433606, be, and it is hereby amended in this particular and none other, to-wit:

By substituting for the second paragraph in the seventh section of said lease, a new paragraph which shall read as follows:

"Lessor agrees to fill said areas with suitable materials. Lessee agrees to grade such fill in such a manner as to provide adequate surface drainage for the improvements to be placed thereon by the lessee. Lessee agrees to cover such areas as may be in need thereof with a dirt fill of not less than six (6) inches."

2. For all fill placed by lessee in accordance with the requirements of the second paragraph of the seventh section of said lease as hereby amended, lessor shall pay to lessee the sum of two and four tenth cents ($0.024) per square foot, payable monthly upon receipt of invoices therefor and certification by lessee as to the actual number of square feet of fill placed,

and the approval of said invoices and fill by the City Engineer of lessor.

The obligation of lessor to pay for such fill shall in no event exceed the sum of SEVENTY THOUSAND DOLLARS ($70,000.00) and said obligation shall cease four and one-half years from the effective date of this amendment, and thereafter any such fill shall be placed at the sole expense of lessee.

Payments hereunder shall be in full satisfaction of the grading, filling, inspection and engineering required by lessor with respect to the subject fill prior to this amendment.

3. Lessee accepts the obligations contained in this agreement in full satisfaction of the work required of lessor in the second sentence of the second paragraph of the seventh section of said lease, prior to its amendment herein.

It is also the intent of the lessee to hereby acknowledge that the fill placed by Frank Dredging Company under contract with The City of San Diego dated January 18, 1952, and filed in the office of the City Clerk as Document No. 443808 is accepted as suitable material.

4. Lessee shall have the right, prior to its occupancy of the leased premises, to enter thereon and perform such improvement work as lessee may consider desirable.

5. In the event that a situation arises which shall bring into operation or effect, the sixth section of said lease and at such time there is still due from lessor, moneys payable under section 2 of this agreement, then if the parties cannot negotiate a reasonable and just settlement, the obligation as to the placement of the then uncompleted fill shall revert to and be reimposed upon lessor in the same manner as it existed prior to the amendment herein contained.

IN WITNESS WHEREOF, this agreement on the day and year first hereinabove written, is executed by The City of San Diego, acting by its City Manager, pursuant to the authority contained in Resolution No. _____ of its City Council, and by the lessees herein.

THE CITY OF SAN DIEGO,

By Eu B Low
Assistant City Manager.

M. F. Purdy
M. F. Purdy

Lila Witcher
Lila Witcher
Lessees.

I HEREBY APPROVE the form and legality of the within First Amendment to Lease, this 20th day of Oct., 1952.

J. F. DuPAUL, City Attorney,

By Wm Co Whitmore
Deputy City Attorney.

00174

ELS:TPH 2-D-7

Doc 499779
Book 113788

15

ASSIGNMENT OF LEASE

THIS ASSIGNMENT, made and entered into as of the 1st day of May, 1954, by and between MARIAN FESLER PURDY and LILA C. WITCHER, hereinafter sometimes referred to as "Assignors", and DE ANZA HARBOR INC., a California corporation, sometimes referred to as "Assignee",

W I T N E S S E T H:

That for and in consideration of the sum of $1.00, this day in hand paid by the Assignee to the Assignors, receipt whereof is hereby acknowledged, and for other good and valuable consideration whether herein expressed or not, MARIAN FESLER PURDY and LILA C. WITCHER do hereby and by these presents sell, assign, transfer and set over unto DE ANZA HARBOR INC., a California corporation, all of their right, title and interest in and to that certain Lease dated May 18, 1951, between the CITY OF SAN DIEGO, a Municipal corporation, therein designated as "Lessor", and M. F. PURDY and LILA WITCHER, therein designated as "Lessee", which said Lease was filed with the City Clerk of the said City of San Diego as Document No. 433606, and as later amended pursuant to authority contained in Resolution No.108598 of the City Council of the City of San Diego, and the said Assignee does hereby and by these presents accept said assignment and undertakes and agrees to be bound by the terms and conditions of said Lease as amended, and does hereby obligate itself to perform each and every of the terms and conditions thereof as fully and to the same extent as though said Assignee had been named in said Lease as the original Lessee.

This Assignment is made to DE ANZA HARBOR INC., a California corporation, pursuant to the provisions of Paragraph number TWENTY-FIFTH of the above-entitled Lease dated May 18, 1951, upon the understanding, however, that such Assignment shall not become effective for any purpose until written consent of the Lessor has first been obtained and until such written consent

has been executed on behalf of Lessor by its City Manager.

IN WITNESS WHEREOF, the Assignors have executed this Assignment and the Assignee has caused the same to be executed for and on its behalf by its Present and Secretary-Treasurer thereunto duly authorized, all as of the day and year first hereinabove written.

Marian Fesler Purdy
MARIAN FESLER PURDY

Lila C. Witcher
LILA C. WITCHER

"Assignors"

DE ANZA HARBOR INC., a California Corporation,

By Marian Fesler Purdy
President

Lila C. Witcher
Secretary-Treasurer

"Assignee"

WRITTEN CONSENT OF CITY MANAGER OF THE CITY OF SAN DIEGO, A MUNICIPAL CORPORATION, TO ASSIGNMENT OF LEASE

On behalf of the City of San Diego, a Municipal corporation, named as "Lessor" in the above-mentioned Assignment, and as its City Manager, I HEREBY CONSENT TO the Assignment of said above-mentioned Lease being Document No. 433606, as amended, by the Lessees MARIAN FESLER PURDY and LILA C. WITCHER, hereinabove referred to as "Assignors" to DE ANZA HARBOR INC., a California corporation, hereinabove referred to as "Assignee".

DATED at San Diego, California, this 28th day of June, 1954.

CITY MANAGER OF THE CITY OF SAN DIEGO

THE FOREGOING IS APPROVED AS TO FORM AND CONTENT:

Alan M Frastaci

CITY ATTORNEY FOR THE CITY OF SAN DIEGO, CALIFORNIA

DOCUMENT No. 195292

Filed AUG 3 1954

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

Modification of Lease
Agreement with Lee
Anya Hulet,
Inc

FORM 1262

auditor copy 8-9-54
Property
County Assessor

ROLL NO. 83 293

00595

MODIFICATION OF LEASE AGREEMENT

THIS AGREEMENT, made and entered into this 26th day of July, 1954, by and between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "City"; and DE ANZA HARBOR INC., a California corporation, hereinafter called "Corporation", WITNESSETH:

WHEREAS, the City and the predecessors in interest of Corporation, Marian Fesler Purdy and Lila C. Witcher, have entered into and executed a Lease Agreement wherein City leased to such parties portions of Pueblo Lots 1793 and 1203, for the purpose of constructing, operating and maintaining thereon a tourist and trailer park area, which said Lease Agreement is filed in the office of the City Clerk as Document No. 433606; and

WHEREAS, Marian Fesler Purdy and Lila C. Witcher and Corporation entered into and executed an assignment of the aforementioned Lease Agreement, wherein said Purdy and Witcher assigned all their right, title and interest in and to said Lease Agreement to Corporation; and

WHEREAS, City and Corporation are desirous of modifying said Lease Agreement to alter and amend the provisions affecting public liability and property damage insurance, Workmen's Compensation Insurance, and extended coverage fire insurance, NOW, THEREFORE, in consideration of the mutual covenants and conditions,

IT IS UNDERSTOOD AND AGREED by and between the parties hereto, as follows:

I.

Paragraph Fifteenth of said Lease Agreement hereinabove described shall be, and the same is hereby modified and amended

to read as follows:

"Fifteenth. INSURANCE. Lessee agrees to take out and maintain public liability insurance with an insurance carrier satisfactory to City to protect against loss from liability imposed by law for damages on account of bodily injury, including death resulting therefrom, suffered or alleged to be suffered by any person or persons whatsoever resulting directly or indirectly from any act or activities of Lessee or any person acting for Lessee or under Lessee's control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person caused directly or indirectly by or from acts or activities of Lessee or any person acting for Lessee or under Lessee's control or direction. Such public liability and property damage insurance shall be maintained in full force and effect during the entire term of this lease in the amounts of not less than ONE HUNDRED THOUSAND dollars ($100,000.00) for one person injured in one accident and not less than THREE HUNDRED THOUSAND dollars ($300,000.00) for more than one person injured in one accident, and in the amount of not less than TWENTY-FIVE THOUSAND dollars ($25,000.00) with respect to any property damage aforesaid. Proof of such insurance shall be filed with City and shall be satisfactory in form to City. Said policies shall have a non-cancellation-without-notice-to-City clause and shall provide that copies of all cancellation notices shall be sent to City and shall also name the City as an additional insured. If Lessee does not keep such insurance in full force and effect, City may take out the necessary insurance and pay the premium, and the repayment thereof shall be deemed to be a part of the rental and paid as such on the next day upon which rent becomes due.

"Provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which Lessee may be held responsible for the payment of damages to persons or property resulting from its activities or the activities of any person or persons for which it is otherwise responsible."

II.

Paragraph Sixteenth of said Lease Agreement hereinabove described shall be, and the same is hereby modified and amended to read as follows:

"Sixteenth. The Lessee further agrees to take out and maintain the required policy or policies of Workmen's Compensation Insurance covering employees of the Lessee, and to require any sublessee or concessionaire authorized by Lessee to use the leased premises to take out and maintain the required policies of Workmen's Compensation

00507

Insurance covering the employees of such sublessee or concessionaire. The Lessee further agrees to take out and maintain Extended Coverage Fire Insurance in an amount of not less than $45,000.00, insuring the buildings and improvements on the leased premises. Proof of such insurance shall be filed with City and shall be satisfactory in form to City. Said policies shall have a non-cancellation-without-notice-to-City clause and shall provide that copies of all cancellation notices shall be sent to City and shall also name the City as an additional insured. If Lessee does not keep such insurance in full force and effect, City may take out the necessary insurance and pay the premium, and the repayment thereof shall be deemed to be a part of the rental and paid as such on the next day upon which rent becomes due.

"Provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which Lessee may be held responsible for the payment of damages to persons or property resulting from its activities or the activities of any person or persons for which it is otherwise responsible, and City shall have the right to increase these limits to an amount considered adequate as Lessee extends operations on the demised premises."

IN WITNESS WHEREOF the parties hereto have caused this agreement to be executed, THE CITY OF SAN DIEGO by its City Manager, acting pursuant to Resolution No. 110411 of the City Council, and DE ANZA HARBOR INC. by its President and Secretary-Treasurer, the day and year first above written.

THE CITY OF SAN DIEGO

By Ed Blom
Assistant City Manager

DE ANZA HARBOR INC.,
a California Corporation

By Marion Desler Lundy
President

Ella C. Whitaker
Secretary-Treasurer

I HEREBY APPROVE the form and legality of the foregoing Agreement this 26th day of August, 1954.

J. F. DuPAUL, City Attorney

By Douglas W. Wagner
Deputy City Attorney

00508

524518

DOCUMENT NO.

FILED NOV 18 1955

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

Amendment to Lease
Agreement with
La Jolla Parks, Inc.

auditor copy 11/22/55
Property

FILE ROLL NO.

00547 (3)

AMENDMENT TO LEASE AGREEMENT

THIS AMENDMENT TO LEASE AGREEMENT, executed this 10 day of November, 1955, by and between THE CITY OF SAN DIEGO, a municipal corporation hereinafter called "City" and DE ANZA HARBOR INC. hereinafter called "Corporation", WITNESSETH:

WHEREAS, City and the predecessors in interest of Corporation have entered into and executed a lease agreement and amendments thereto wherein City leased to such parties portions of Pueblo Lots 1798 and 1208 for the purpose of constructing, operating and maintaining thereon a tourist and trailer park area, which said lease agreement and amendments are filed in the office of the City Clerk as Documents 433606, 458065, and 495332; and

WHEREAS, City and Corporation now desire to amend said lease agreement to provide for the exclusion from the term GROSS RECEIPTS certain revenue received by Corporation of a minor nature arising from materials furnished and services provided guests of Corporation as a convenience to such guests and to eliminate the necessity of City expending time in the auditing of such minor items; NOW, THEREFORE

In consideration of the mutual covenants and conditions, it is understood by and between City and Corporation that that portion of the abovementioned lease agreement providing for two percent of all gross receipts on all other sub-operations conducted as permitted by law on the leased premises be and the same is hereby amended to read as follows:

> "Two percent (2%) of all gross receipts on all other sub-operations conducted as permitted by law on the leased premises. Provided, however, that minor item of gross income resulting from sales or services provided by the Lessee primarily from the convenience of the guests, in the opinion of the City Manager, may be excluded from rent computation by the Lessee providing Lessee has

previously requested in writing such exclusion, which has been approved in writing by the City Manager. Any such exclusion may be terminated at any time by written notice from City Manager to Lessee."

IN WITNESS WHEREOF, this agreement is executed by The City of San Diego, acting by and through the City Manager of said City acting pursuant to Resolution No. _____ adopted NOV 1 1955, authorizing such execution, and said Corporation has caused this agreement to be executed by its proper officers thereunto duly authorized this 10 day of December, 1955.

THE CITY OF SAN DIEGO

By Ed Blom
Assistant City Manager

DE ANZA HARBOR INC.

By _____
President

I HEREBY APPROVE the form and legality of the foregoing Agreement this 15 day of November, 1955.

J. F. DuPAUL, City Attorney

By Allan M Fraser
Deputy City Attorney

LH.

DOCUMENT NO. 535711

FILED MAY 28 1958

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

Amendment to Lease
Agreement -
de Anza Harbor, Inc
operate Trailer Park
de Anza & St. Mission Bay

auditor
Deputy
Co. Assessor

copy 5-25-58

113 133

FILM ROLL NO. _____

00573

ORIGINAL

AMENDMENT TO LEASE AGREEMENT

THIS AMENDMENT, executed this 10 day of May, 1956, by and between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "City", and DE ANZA HARBOR, INC., a corporation, hereinafter called "Lessee", WITNESSETH:

WHEREAS, City and the predecessors in interest of Lessee have heretofore entered into and executed a Lease Agreement and amendments thereto wherein City leased to such parties portions of Pueblo Lots 1793 and 1208 for the purpose of constructing, operating and maintaining thereon a tourist and trailer park area, which said Lease Agreement and amendments are filed in the office of the City Clerk as Documents Nos. 433606, 458065, 495332 and 524548; and

WHEREAS, City and Lessee now desire to amend said Lease Agreement and amendments thereto, to change the completion date for two hundred (200) additional trailer units from November, 1956 and November, 1958, to November 23, 1960; and providing for the payment by Lessee to City beginning on December 1, 1958, for the equivalent additional rental that Lessee would pay to City if such two hundred (200) additional rental units had been completed on November 23, 1958; NOW, THEREFORE,

In consideration of the mutual covenants and conditions, City and Lessee hereby agree to amend Sub-paragraph 4, paragraph "Second" to read as follows:

"4. Lessee further agrees that it will during the subsequent four years of said lease, said period being November 24, 1956, through November 23, 1960, commence and have ready for occupancy an additional two hundred (200) trailer units to be placed either in area number

one or in area number two.

"Provided, however, that in the event that all or any part of said 200 units are not completed by November 23, 1958, then beginning on December 1, 1958, and for each month thereafter during the term of this agreement until said 200 units are constructed, Lessee shall pay monthly to City as additional rent a sum of money equal to the average rent paid to City per single trailer unit times each unit less than 200 units not so completed, computed as of the 15th day of each month. The average rent paid to City per single trailer unit shall be determined by dividing the total rent paid the City for the previous month by the average number of trailer park sites offered for rent during said previous month. The period November 24, 1958, through November 30, 1958, shall be prorated."

IN WITNESS WHEREOF, this Amendment to Lease Agreement is executed by The City of San Diego, acting by and through the City Manager of said City acting pursuant to Resolution No. [illegible], adopted MAY 10 1956, authorizing such execution, and said Lessee has caused this Amendment to Lease Agreement to be executed and its corporate name and seal to be hereunto affixed by its proper officers thereunto duly authorized, the day and year in this amendment first above written.

THE CITY OF SAN DIEGO

By Ed Blom
Assistant City Manager

DE ANZA HARBOR, INC.

By [signature]
President

Approved as to Form and Legality this 17 day of May, 1956.

J. F. DuPAUL, City Attorney

By [signature] Deputy

00575

DOCUMENT NO._____

FILED_____

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

Amendment to Lease Agreement with De Anza Harbor, Inc. covering portions of Pueblo Lots 1798 and1208 for constructing, operating and maintaining a tourist and trailer park area - re filling areas with dirt fill.

3/27/57

Property
Park Dept
Mission Bay
Assessor
Auditor

FILM ROLL NO._____

00577

ORIGINAL

AMENDMENT TO LEASE AGREEMENT

THIS AMENDMENT, executed this 7th day of March, 1957, by and between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "City" and DE ANZA HARBOR, INC., a corporation, hereinafter called "Lessee", WITNESSETH:

WHEREAS, City and the predecessors in interest of Lessee have heretofore entered into and executed a Lease Agreement and amendments thereto wherein City lease to such parties portions of Pueblo Lots 1798 and 1208 for the purpose of constructing, operating and maintaining thereon a tourist and trailer park area, which said Lease Agreement and amendments are filed in the office of the City Clerk as Documents Nos. 433606, 458065, 495332, 524548 and 535711; and

WHEREAS, said Lease Agreement and amendments require the City to provide fill dirt to the leased premises and require Lessee to grade such fill to provide adequate surface drainage for the improvements required to be placed thereon by Lessee, and require, in the alternate, that City pay Lessee the sum of two and four tenth cents ($0.024) per square foot for all fill dirt so placed by Lessee; and

WHEREAS, said Lease Agreement and amendments require such filling and grading to be completed by April 21, 1957, and City and Lessee now desire to extend such completion date to and including April 20, 1960; NOW, THEREFORE,

In consideration of the mutual covenants and conditions, City and Lessee hereby agree to amend the second paragraph of Section "Seventh" of said Lease Agreement to read as follows:

> "City agrees to fill said areas with suitable material and in such a manner to provide adequate surface drainage for the improvements to be placed thereon by the Lessee. The City agrees to cover said areas with a dirt fill of not less than six inches (6"). In the event that Lessee

places such fill dirt, City shall pay to Lessee the sum of two and four tenth cents ($0.024) per square foot, payable monthly upon receipt of invoices therefor, and certification by Lessee as to the actual number of square feet of fill placed and the approval of said invoices and fill by the City Engineer. The total obligation of City for the placing of such fill dirt, or the compensation of Lessee under the terms of this Lease Agreement and amendments shall in no event exceed the sum of SEVENTY THOUSAND DOLLARS ($70,000.00), which shall include all fill placed on the leased premises since the execution of said Lease Agreement. The obligations for placing such fill dirt or compensating Lessee, therefore, shall cease on April 20, 1960; and thereafter any fill shall be placed at the sole expense of Lessee."

IN WITNESS WHEREOF, this amendment to Lease Agreement is executed by The City of San Diego, acting by and through the City Manager of said City pursuant to Resolution No. [illegible] authorizing such execution, and is executed by Lessee by its proper officer thereunto duly authorized, the day and year in this amendment first above written.

THE CITY OF SAN DIEGO

By E. A. Blow
Assistant City Manager

DE ANZA HARBOR, INC.

By Frances Dealey Pardee - Pres.

I HEREBY APPROVE the form and legality of the foregoing amendment this 12 day of March, 1957.

J. F. DuPAUL, City Attorney

By Alan M. Freedman
Chief Deputy

1/14/57-rc

00579

DOCUMENT NO. 595198

FILED JUL 22 1959
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

[illegible] with [illegible] for operation of a Trailer Park.

[illegible]
[illegible] [illegible] 7-22-59
[illegible]
[illegible]
[illegible]

FILM ROLL NO. 167 176

00581

AMENDMENT TO LEASE AGREEMENT

THIS AMENDMENT, executed this 16th day of July, 1959, by and between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "City" and DE ANZA HARBOR, INC., a California Corporation, hereinafter called "Lessee", WITNESSETH:

WHEREAS, City and the predecessors in interest of Lessee have heretofore entered into and executed a Lease Agreement and amendments thereto wherein City leased to such parties portions of Pueblo Lots 1798 and 1208 for the purposes of constructing, operating and maintaining thereon a tourist and trailer park area, which said Lease Agreement and amendments are filed in the office of the City Clerk as Documents Nos. 433606, 458065, 495332, 524548 and 535711; and

WHEREAS, City and Lessee now desire to amend said Lease Agreement as hereinafter set forth; NOW, THEREFORE,

IN CONSIDERATION of the mutual covenants and conditions herein contained, the provisions of said Lease Agreement, as contained in letter dated June 14, 1949, executed by M. F. Purdy and R. S. Witcher, attached to said Lease Agreement and made a part thereof, are hereby amended as follows:

1. The number of trailer sites within Area "A" shall at option of Lessee be reduced from 500 to 350.

2. At the option of Lessee automobiles owned by the occupant of each trailer site may be parked on that occupant's trailer site.

3. The minimum size of trailer sites for the 126 transient units in Unit #3 shall be not less than 1000 square feet in area.

4. In the event that the San Diego Municipal Code is amended to permit the construction of carports on trailer sites, then, at the option of Lessee, carports may be constructed on any or all such trailer sites.

5. Lessee shall be required to maintain and use 126 trailer sites contained in Unit #3 for transient trade. Occupancy of such trailer sites shall be limited to, not to exceed 6 months within any 12 month period, and Lessee shall also maintain adequate records in order to determine the period of occupancy of the tenants within said Unit #3.

It is the intent of the parties under the requirements of this paragraph that trailer sites in the transient area shall be made available for the public on a "First come - First served" basis, subject however, to reasonable rules, regulations and restrictions of the De Anza Trailer Park. Occupancy by the same person or persons within the transient area exceeding a total of 6 months within any 12 month period shall constitute violation of the requirements of this paragraph, and the City shall have the right to require that the Lessee immediately terminate the occupancy of any tenant who is in violation of any of the above restrictions.

Lessee shall begin construction of improvements in Unit No. 3 within 60 days after the execution date of this amendment and shall pursue said development in a continuous and diligent manner to its completion.

IN WITNESS WHEREOF, this Amendment to this Lease Agreement is executed by the City acting by and through the City Manager of said City, under and pursuant to Resolution No. 185751 authorizing such execution, and the Lessee has caused this Amendment to be executed and its corporate name and seal to be affixed by the proper officers, the day and year first above written.

THE CITY OF SAN DIEGO

By _____
City Manager

De Anza Harbor, Inc.
Lessee

_____
President

I HEREBY APPROVE the form and legality of the foregoing Lease Amendment this 20 day of July, 1959.

J. F. DU PAUL, City Attorney

By _____
Chief Deputy

00583

606880 E-H

FILED APR 14 1960
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

Lease-Amendment-Mission Bay -

De Anza Harbor, Inc.-pors. P.L. 1798 & 1208

tourist & trailer park area.

cc: Property
Auditor
Park & Rec.
Co. Assessor-

APR 14 1960

175 232

00585

AMENDMENT TO LEASE AGREEMENT

THIS AMENDMENT, executed this 6th day of April, 1960, by and between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "City" and DE ANZA HARBOR, INC., a corporation, hereinafter called "Lessee", WITNESSETH:

WHEREAS, City and the predecessors in interest of Lessee have heretofore entered into and executed a Lease Agreement and amendments thereto wherein City lease to such parties portions of Pueblo Lots 1798 and 1208 for the purpose of constructing, operating and maintaining thereon a tourist and trailer park area, which said Lease Agreement and amendments are filed in the office of the City Clerk as Documents Nos. 433606, 458065, 495332, 524548, 535711 and 550838; and

WHEREAS, said Lease Agreement and amendments require the City to provide fill dirt to the leased premises and require Lessee to grade such fill to provide adequate surface drainage for the improvements required to be placed thereon by Lessee, and require in the alternate, that City pay Lessee the sum of two and four tenth cents ($0.024) per square foot for all fill dirt so placed by Lessee; and

WHEREAS, said Lease Agreement and amendments require such filling and grading to be completed by April 21, 1960 and City and Lessee now desire to extend such completion date to and including April 20, 1962; NOW, THEREFORE,

In consideration of the mutual covenants and conditions, City and Lessee hereby agree to amend the second paragraph of Section "Seventh" of said Lease Agreement to read as follows:

> "City agrees to fill said areas with suitable material and in such a manner to provide adequate surface drainage for the improvements to be placed thereon by the Lessee. The City agrees to cover said areas with a dirt fill of not less than six inches (6"). In the event that Lessee places such fill dirt, City shall pay to Lessee the sum of two and four tenths cents ($0.024) per square foot, payable monthly upon receipt of invoices therefor, and certification by

Lessee as to the actual number of square feet of fill placed and the approval of said invoices and fill by the City Engineer. The total obligation of City for the placing of such fill dirt, or the compensation of Lessee under the terms of this Lease Agreement and amendments shall in no event exceed the sum of SEVENTY THOUSAND DOLLARS ($70,000.00), which shall include all fill placed on the leased premises since the execution of said Lease Agreement. The obligations for placing such fill dirt or compensating Lessee, therefore, shall cease on April 20, 1962; and thereafter any fill shall be placed at the sole expense of Lessee."

Lessee shall, on or before April 21, 1961, submit plans to City for City approval for construction of improvements in Area "A". Said plans shall show construction of a minimum of 125 trailer space units. Lessee shall begin construction of improvements in said Area "A" within 180 days after approval by City of the construction plans and shall pursue said development in a continuous and diligent manner to its completion.

IN WITNESS WHEREOF, this amendment to Lease Agreement is executed by The City of San Diego, acting by and through the City Manager of said City pursuant to Resolution No. 159832 authorizing such execution, and is executed by Lessee by its proper officer thereunto duly authorized, the day and year in this amendment first above written.

THE CITY OF SAN DIEGO

By George E. Bean
City Manager

DE ANZA HARBOR, INC.

By [illegible]

I HEREBY APPROVE the form and legality of the foregoing amendment this 11 day of April, 1960.

J. F. DU PAUL, City Attorney

By [illegible]
Chief Deputy

DOCUMENT NO. 647346

FILED OCT 22 1962

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

(Lease-M.Bay, DeAnza Pt.)

Amendment

Lease agreement with DeAnza Harbor, Inc. - portions of P/L 1798 & 1208 - construct, operate & maintain a tourist and trailer park area - Lessee to fill area with fill dirt - City to reimburse

cc: Auditor
Cc. Assessor - J. Collins
Park & Rec - Dolan
Mission Bay Park - F. Cooke

Dup Orig to M.B. Park - F. Cooke, for transmittal

00612

AMENDMENT TO LEASE AGREEMENT

This Amendment, executed this 17 day of October, 1962, by and between the CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and DeANZA HARBOR, INC., a California corporation, hereinafter called "LESSEE," WITNESSETH:

WHEREAS, CITY and the predecessors in interests of LESSEE have heretofore entered into and executed a Lease Agreement and amendments thereto, wherein CITY leased to such parties portions of Pueblo Lots 1798 and 1208 for the purpose of constructing, operating and maintaining thereon a tourist and trailer park area, which said Lease Agreement and amendments are filed in the office of the City Clerk as Documents Nos. 433606, 458065, 495332, 524548, 535711, 550306, 595198 and 606880, and

WHEREAS, said Lease Agreement and amendments require the CITY to provide fill dirt to the Leased Premises and require LESSEE to grade such fill to provide adequate surface drainage for the improvements required to be placed thereon by LESSEE, and require in the alternate that CITY pay LESSEE the sum of TWO AND FOUR TENTH CENTS ($.024) per square foot for all fill dirt so placed by LESSEE, and

NOW THEREFORE, in consideration of the mutual covenants and conditions, CITY and LESSEE hereby agree to amend and modify said Lease Agreement to provide as follows:

I. THAT THE SECOND PARAGRAPH OF THE SEVENTH SECTION OF SAID LEASE AGREEMENT IS HEREBY DELETED IN ITS ENTIRETY AND THE FOLLOWING SUBSTITUTED THEREFOR:

LESSEE shall have the right to fill said Lease Area with suitable material in such a manner to provide adequate surface drainage for the improvements to be placed thereon. In the event that LESSEE places such fill dirt, CITY shall pay to LESSEE the sum of TWO AND FOUR TENTH CENTS ($.024) per square foot, payable upon completion of all underground utilities and fill dirt is placed on Lease Premises and is graded. LESSEE shall furnish CITY certified, by LESSEE, invoices as to the actual number of square feet of fill placed. Said invoices and fill placed shall be subject to approval by the City Engineer. The total obligation of CITY to pay LESSEE for the placing of such fill dirt on the Lease Premises under the terms of this Lease Agreement and Amendments shall in no event exceed the sum of SEVENTY THOUSAND DOLLARS ($70,000.00), of which FORTY-FIVE THOUSAND, FIVE HUNDRED SIXTY-THREE DOLLARS AND SIXTY-NINE CENTS ($45,563.69) has been paid to Lessee as of this date. Therefore, the total obligation of CITY to pay as compensation to LESSEE for placing the fill dirt on Lease Premises under this Amendment shall in no event exceed TWENTY-FOUR THOUSAND, FOUR HUNDRED THIRTY-SIX DOLLARS AND THIRTY-ONE CENTS ($24,436.31). The obligation of CITY to compensate LESSEE therefor shall cease on June 15, 1963.

00613

II. THAT THE FOLLOWING IS HEREBY ADDED TO THE SECOND SECTION OF SAID LEASE AGREEMENT:

LESSEE shall, on or before the effective date of this Amendment, submit plans to CITY for CITY approval for construction of the final phase of development. Said plans shall consist of complete working plans and specifications, excepting therefrom the recreation area, of the final phase of development.

LESSEE shall begin construction of said improvements within 120 days after approval of CITY of the construction plans and shall pursue development in a continuous and diligent manner to its completion, which shall be no later than June 15, 1963. Further, LESSEE shall commence construction of the recreation area upon completion of the above, in no event later than December 31, 1963, and pursue in a continuous and diligent manner to its completion. Provided, however, that in the event all or any part of the final phase of development, excepting therefrom said recreation area, is not completed by June 15, 1963, then beginning on June 16, 1963, and for each and every month thereafter during the term of this agreement until said development is completed, LESSEE shall pay monthly to CITY as additional rent, a sum of money equal to SEVENTY-FIVE PERCENT (75%) of the average rent paid to CITY per single trailer unit times the number of units not so completed, computed as of the 15th day of each month. The average rent paid to CITY per single trailer unit shall be determined by dividing the total rent paid the CITY, excepting therefrom rent paid to CITY from the Vacation Unit, for the previous month by the average number of trailer park sites, excepting therefrom the number of trailer park sites in the Vacation Unit, offered for rent during said previous month. Provided, however, City Manager shall have the right to extend for a period of thirty (30) days any of the aforementioned provisions, if in his opinion, good cause is shown why an extension should be made.

It is further agreed that the above described schedules for construction of the above described improvements shall be extended for such periods as LESSEE is prevented from proceeding with construction due to causes beyond its reasonable control (Acts of God, governmental restrictions, strikes, shortages of material or labor).

III. THAT THE FOLLOWING IS HEREBY ADDED TO THE FOURTH SECTION OF SAID LEASE AGREEMENT:

Any amount due City from income accruing to the LESSEE from coin-operated machines and telephones in which the LESSEE has no ownership equity shall be computed in accordance with percentage basis as set forth in this section, on the basis of income received by LESSEE, rather than the total gross income of said machines or telephones. Provided, however, that in the event the total gross income of said machines and/or telephones exceeds the amount of five hundred dollars ($500.00) per month, then the total amount due City from income derived from said machines and/or telephones shall be computed under said percentage basis as set forth in this section on the basis of the total gross income of said machines and/or telephones, rather than on the income received by Lessee.

00614

IN WITNESS WHEREOF, this Amendment to Lease Agreement is executed by the CITY OF SAN DIEGO, acting by and through the City Manager of said CITY, pursuant to Resolution No. 173050 authorizing such execution, and is executed by LESSEE by its proper officer thereunto duly authorized, the day and year in this Amendment first above written.

THE CITY OF SAN DIEGO

By _____
Acting City Manager

DeANZA HARBOR, INC.

By _____

By _____

I HEREBY APPROVE the form and legality of the foregoing Amendment this 16th day of Oct, 1962.

ALAN M. FIRESTONE, City Attorney

By _____
Deputy

RESOLUTION No. 173090

ADOPTED ON Oct 18 1962

BE IT RESOLVED by the Council of The City of San Diego as follows:

That the City Manager be, and he is hereby authorized and empowered to execute, for and on behalf of said City, an amendment to lease agreement between The City of San Diego and DeAnza Harbor, Inc., in connection with the leasing of portions of Pueblo Lots 1793 and 1203, under the terms and conditions set forth in the form of amendment to lease agreement on file in the office of the City Clerk under Document No. 647242.

Presented By_____

APPROVED: ALAN M. FIRESTONE, City Attorney

By_____
Chief Deputy City Attorney

rjt
3/20/62

00616

FORM CC-1270 (REV. 10-61)

DOCUMENT NO. 730521

FILED JAN 7 1970

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

(Lease-M.B.ParkDeAnzaPoint)

9th Amendment to Lease Agreement with De Anza Harbor, Inc. covering De Anza Trailer Park, Mission Bay providing that:

(1) Mission Bay Assoc. will retain ownership of 51% of stock of De Anza Harbor, Inc.
(2) Mission Bay Assoc. to provide competent management to City's satisfaction
(3) Amend exclusive right to operate only transient tourist trailer park within one-mile radius to exclude 6-15 through 9-15 each year
(4) Provide for redevelopment plan & schedule to be submitted by lessee
(5) Auth transfer of stock of 2 sub-lease corporations to Assoc. Mobile Estates
(6) Anti-Discrimination Clause

R-198717 12-18-69

cc: Aud 3C
Property - 5A
Dup. Orig. Property - 5A
Recreation Director - 9B
County Assessor - BB 1-7-70

00641

ORIGINAL

12/16/60

NINTH AMENDMENT TO LEASE AGREEMENT

THIS AGREEMENT executed by and between THE CITY OF SAN DIEGO, a municipal corporation (CITY), and DE ANZA HARBOR, INC., a California corporation (LESSEE):

A. Heretofore, CITY entered into a lease agreement dated May 18, 1951, a copy of which lease agreement is filed in the Office of the City Clerk as Document No. 433606, which lease agreement was assigned to LESSEE herein by assignment filed in the Office of the City Clerk as Document No. 499799 and which lease agreement was amended by those certain agreements filed in said Office of the City Clerk as Document Nos. 458065, 495332, 524548, 535711, 550308, 595193, 606880 and 647346; and

B. The parties hereto now desire to further amend said lease agreement in the manner herein set forth.

NOW, THEREFORE, CITY and LESSEE hereby agree ~~and ASSIGNEE hereby consents~~ as follows:

I. That Section Twenty-fifth of said lease is hereby deleted in entirety and the following is substituted therefor:

"Twenty-fifth.

"(a) The corporation named herein as LESSEE shall:

(1) remain owned and controlled by MISSION BAY ASSOCIATES, a limited partnership whose general partners ~~is~~ are Herbert M. Gelfand, and LIBERTY ~~TREASURY~~ LEASING, INC., a California corporation, to the extent of at least 51% of ~~its~~ lessees issued and outstanding stock, and

(2) maintain competent management to CITY'S satisfaction throughout the term of this lease agreement, provided further that CITY'S approval of such management shall not be unreasonably withheld.

12/10/69

"(b) Notwithstanding the provisions of this Paragraph Twenty-five or Paragraph Twelve hereof, the CITY hereby consents to the assignment of the stock interests and the hypothecation of the assets, including this lease, of MISSION BAY ASSOCIATES, a limited partnership, to MARIAN MARCHAND, LILA C. WITCHER and ROBERT W. HARPER, and to the reassignment ~~thereof~~ thereof to them in the event of default of MISSION BAY ASSOCIATES as to this Lease Agreement, or that certain Purchase Agreement dated as of July 1, 1969, between MISSION BAY ASSOCIATES, and MARIAN MARCHAND, LILA C. WITCHER and ROBERT W. HARPER. In the event default and reassignment as aforesaid has occurred prior to the commencement of approved redevelopment as provided in Paragraph Twenty-ninth hereof, the provisions of said Paragraph Twenty-ninth shall not apply to MARIAN MARCHAND, LILA C. WITCHER and ROBERT W. HARPER, ~~or their successors in interest~~ or heirs."

II. That Section Twenty-seventh of said lease is hereby deleted in entirety and the following is substituted therefor:

"Twenty-seventh. The CITY agrees that in the event CITY deems it advisable to develop other tourist trailer parks in Mission Bay Park, the LESSEE is hereby granted the right of first refusal to operate said additional trailer parks, providing the LESSEE agrees to operate said additional trailer parks on terms equal to the terms and conditions of any other party and on terms and conditions similar to those set forth in this lease and to be mutually agreed upon. The CITY further agrees that so long as this lease is in effect, exclusive only of the period commencing with June 15th and ending with September 15th of each year of said term, the CITY will not lease to any other Lessee, any area within one mile distant from the leased premises for trailer park purposes."

III. That the following Section Twenty-ninth is hereby added in sequence to said lease agreement:

"Twenty-ninth. Notwithstanding any other covenant or condition of this lease to the contrary, within one year following the effective date of the 9th Amendment to Lease Agreement hereof, which for purposes of this provision shall mean the date upon which City Council authorizes this amendment, Lessee shall submit to the City Manager a plan for the redevelopment of said premises which shall include new uses for said premises compatible with the purposes of MISSION BAY PARK and the highest and best use of the real property, a suggested schedule for implementing said new uses and terminating existing uses, the proposed method of financing said redevelopment, the economic feasibility of said redevelopment and the manner in which any conflicting terms and conditions of this lease, as they may then exist, are to be modified, amended or supplemented in order to provide for said redevelopment. In the event the City Manager approves said redevelopment plan, the City shall have the option for 12 months following its submission to the City Manager to adopt the redevelopment plan and modify, amend or supplement this lease. In the event the City Manager does not approve of said redevelopment plan within 90 days of receipt by City Manager of said plan and makes recommended modifications of said plan to LESSEE, LESSEE shall, in good faith, consider City Manager's recommendation and resubmit said plan to the City Manager within 90 days of receipt by LESSEE of said recommendation. Upon resubmission by Lessee, as aforesaid, CITY shall have the option for 12 months following receipt of the plan to adopt it and modify, amend or supplement this lease in order to provide for said redevelopment. Upon adoption by the CITY of the redevelopment plan, CITY shall, at the same time, amend, modify or supplement this lease as described in said redevelopment plan and LESSEE shall exercise its best efforts to perform in accordance with the provisions, conditions and terms as described in said redevelopment plan, subject to the ability of LESSEE to obtain adequate financing. In the event CITY

does not adopt said redevelopment plan within said 12 month period, then this lease shall remain in full force and effect as to all covenants and conditions then existing without liability of the CITY for failure to so adopt. In the event the CITY has adopted said redevelopment plan and agreed to modify, amend, or supplement this Lease and the redevelopments contemplated by said plan do not occur within three (3) years after adoption, as aforesaid, then, in that event, the rental requirement of 5% of gross income from trailer park rentals as specified in Section Fourth hereof shall be increased to 10% of said gross income immediately and automatically and remain in effect until said redevelopment is commenced. In the event only that LESSEE fails to submit a plan for redevelopment to the City Manager within one year following the effective date of the 9th Amendment to the Lease Agreement hereof, together with an extension not to exceed 90 days granted by the City Manager in his sole discretion or any other extensions granted by the City Council, then the rental requirement of 5% on gross income from trailer park rentals as specified in Section 4th hereof shall be increased to 20% of said gross income immediately and automatically effective upon the first anniversary following said effective date of said 9th Amendment to Lease Agreement hereof or any extensions thereof granted by the City Manager or City Council, as aforesaid."

IV. That the following Section Thirtieth is hereby added in sequence to said lease agreement:

"Thirtieth.

"Whereas, heretofore, CITY consented to that certain sublease between LESSEE herein and DE ANZA TRAILER HARBOR UNIT ONE, a California corporation, filed in the Office of the City Clerk as Document No. 499780, CITY hereby further consents to the assignment, sale and transfer of all stock interest or assets of DE ANZA TRAILER HARBOR UNIT ONE to ASSOCIATED MOBILE ESTATES, a limited partnership, subject to all of the terms, conditions and obligations of this lease, and

"Whereas, heretofore CITY consented to that certain sublease between LESSEE herein and DE ANZA TRAILER HARBOR UNIT TWO, a California corporation, filed in the Office of the City Clerk as Document No. 538982, CITY hereby further consents to the assignment, sublease, sale and transfer of all stock interest or assets of DE ANZA TRAILER HARBOR UNIT TWO to ASSOCIATED MOBILE ESTATES, a limited partnership, subject to all of the terms, conditions and obligations of this lease.

V. "Thirty-first. That the following Section Thirty-first is hereby added in sequence to said lease agreement:

ANTI-DISCRIMINATION. LESSEE shall not discriminate in any manner against any person or persons on account of race, color, creed or national origin in LESSEE'S use of the premises, including, but not limited to, the providing of goods, services, facilities, privileges, advantages and accommodations, and the obtaining and holding of employment."

VI. This Ninth Amendment to Lease Agreement shall be effective as of the day the same is executed by the CITY.

VII. Nothing herein is intended to alter or amend any other covenant or condition of said Lease Agreement.

THE CITY OF SAN DIEGO,
a Municipal corporation

By: _____
City Manager

LESSEE:

DE ANZA HARBOR, INC., a California corporation

By: _____

By: _____

APPROVED AS TO FORM AND LEGALITY THIS NINTH AMENDMENT TO LEASE AGREEMENT THIS 5th DAY OF January, 1970.

JOHN W. WITT, City Attorney

By _____
Deputy

jh
12-17-69

Jm

DOCUMENT No. 458065

Filed OCT 30 1952

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

First Amendment to Judy-Witcher "De Anza Point Tourist Area" Lease.

FORM 1262

Auditor

Property copy Nov. 5-52

Engin. "

FILM ROLL NO. 58 1?5

Dup. copy mailed to Box 63, Bonita, Calif. Nov. 5-52

00171

De Anza Harbor Resort
MOBIL ESTATES

F. T. P.

DOCUMENT No. 433606

Filed MAY 21 1951

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

Lease
N. J. Cuely and
Lila Witcher
for land on
De Anza Point Mission Bay

Form 1262

and -
Mission Bay - copy from Manager
Property - 5-21-51
Manager -

FILM ROLL NO. 39 277

Co. assessor copy 4-24-52

00-120

L E A S E

THIS LEASE, made and entered into in duplicate this 14th day of December, 1951, by and between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter designated as the "lessor", and M. F. PURDY and LILA WITCHER, hereinafter designated as the "lessee", WITNESSETH:

That the lessor, for the considerations hereinafter set forth, hereby leases to the lessee for the term and upon the conditions hereinafter set forth those certain portions of the tidelands of Mission Bay granted to The City of San Diego by act of the Legislature of the State of California, approved April 27, 1945, and entitled, "An Act granting certain lands, tidelands and submerged lands of the State of California to The City of San Diego upon certain trusts and conditions", which portion of tidelands hereby leased is hereinafter referred to as "De Anza Point Tourist Area", and those certain portions of the California State Park Lands in The City of San Diego, County of San Diego, State of California, leased to The City of San Diego by an agreement entered into the 29th day of June, 1945, between the State Park Commission of the State of California and The City of San Diego, and more particularly described as follows:

The real property covered by this lease is located at the Northeast corner of Mission Bay in The City of San Diego, County of San Diego, State of California, as shown on City Engineering Department's Map No. 3-429 and described as follows:

Parcel No. 1 shall consist of the following areas:
That portion of Pueblo Lot 1798 of the Pueblo Lands of San Diego according to a map thereof made by James Pascoe in 1870, a copy of which map was filed in the Office of the Recorder of San Diego County, November 14, 1921 and known as Miscellaneous Map No. 36 and more particularly described as follows:

Beginning at a point which is shown as Station No. 1 on the U.S. Coast and Geodetic Survey of the Mean High Water Line of Mission Bay on Miscellaneous Map No. 69 filed in

the Office of the Recorder of San Diego County on March 8, 1926, said point of beginning being South 14° 35' East a distance of 446.92 feet from the Northeasterly corner of Pueblo Lot 1798; thence South 72° 40' West a distance of 587.40 feet to a point shown as Station "E" on Miscellaneous Map No. 69; thence South 78° 21' West a distance of 574.48 feet, more or less, to a point on the Mean High Tide Line of Mission Bay; thence Northerly along the Mean High Tide Line a distance of 390.79 feet, more or less; thence North 75° 37' 15" East a distance of 590.11 feet to a point tangent to a curve; thence Easterly along the arc of a curve concave to the right with a radius of 1,500 feet through an angle of 15° 14' 33" a distance of 399.05; thence South 89° 08' 12" East a distance of 151.54 feet to a point on a straight line between the Northeasterly corner of Pueblo Lot 1798 and the point of beginning; thence South 14° 35' East a distance of 294.32 feet to the point of beginning, containing 10.20 acres, more or less.

1A. That portion of Pueblo Lot 1208 of the Pueblo Lands of San Diego according to a map thereof made by James Pascoe in 1870, a copy of which Map was filed in the Office of the Recorder of San Diego County, November 14, 1921 and known as Miscellaneous Map No. 36, more particularly described as follows:

Beginning at a point which is shown as Station No. 1 on the U. S. Coast and Geodetic Survey of the Mean High Water Line of Mission Bay on Miscellaneous Map No. 69 filed in the Office of the County Recorder on March 8, 1926, said point of beginning bears South 14° 35' East a distance of 446.92 feet from the Northeasterly corner of Pueblo Lot 1798; thence North 72° 26' East a distance of 209.53 feet; thence due North 118.97 feet to the tangent point of a curve; thence along a curve concave to the left with a radius of 100 feet through an angle of 89° 8' 12" a distance of 155.57 feet; thence North 89° 08' 12" West a distance of 175.92 feet to a point on a straight line between the Northeasterly corner of P.L. 1798 and the point of beginning; thence South 14° 35' East a distance of 294.32 feet to the point of beginning, containing 1.32 acres, more or less.

1B. That portion of Mission Bay granted to The City of San Diego by act of the legislators of the State of California, approved April 27, 1945 entitled "An Act Granting Certain Lands, Tidelands and Submerged Lands of the State of California to The City of San Diego upon Certain Trusts and Conditions" and more particularly described as follows:

Beginning at a point 446.92 feet South 14° 35' East from the Northwesterly corner of Pueblo Lot 1798, said point being shown on Miscellaneous Map No. 69 filed in the Office of the County Recorder on March 8, 1926, as Station No. 1 on the U. S. Coast and Geodetic Survey of the Mean High Water Line of Mission Bay; thence South 72° 40' West a distance of 587.40 feet; thence South 78° 21' West a distance of 574.48 feet, more or less, to a point on the Mean High Tide Line of Mission Bay; thence Southerly along said Mean High Tide Line a distance of 1041.08 feet, more or less; thence North 79° 48' 30" East a distance of 830 feet,

more or less; thence North 52° 27' East a distance of 265.83 feet, more or less, to a point on the Mean High Tide Line of Mission Bay; thence continuing North 52° 27' East a distance of 370.0 feet, more or less, to a point in the waters of Mission Bay; thence North 29° 27' 54" West a distance of 370.0 feet, more or less, to a point on the Mean High Tide Line of Mission Bay; thence due North a distance of 522.40 feet, more or less, to the Southeasterly corner of Parcel 1A; thence South 72° 26' West a distance of 209.57 feet to the point of beginning, containing 28.3 acres of land, more or less, and 2.69 acres of water area, more or less.

Parcel No. 2 shall consist of the following;
That portion of Mission Bay granted to The City of San Diego by act of the legislators of the State of California, approved April 27, 1945 entitled "An Act Granting Certain Lands, Tidelands and Submerged Lands of the State of California to The City of San Diego upon Certain Trusts and Conditions" and more particularly described as follows:

Beginning at the southwesterly corner of Parcel 1B which is a point on the Mean High Tide Line of Mission Bay said point bearing south 25° 18' 31" West a distance of 1934.00, more or less, from the Northeasterly corner of P.L. 1798; thence South 10° 11' 30" East along said Mean High Tide Line a distance of 20 feet; thence continuing along said Mean High Tide Line Southerly and Easterly along a curve concave to the left a distance of 1381.94 feet, more or less; thence North 74° 40' 02" East along said Mean High Tide Line a distance of 1283.0 feet, more or less; thence Easterly, Northerly and Westerly along said Mean High Tide Line along a curve to the left a distance of 894.10 feet, more or less; thence North 4° 47' 16" West a distance of 100.0 feet to a point in the waters of Mission Bay; thence South 83° 40' 09" West a distance of 827.61 feet to a point in the waters of Mission Bay; thence North 4° 47' 16" West a distance of 270 feet to a point in the waters of Mission Bay, said point being the Southeasterly corner of Parcel 1B; thence South 52° 27' West a distance of 370 feet, more or less, to a point on the Mean High Tide Line of Mission Bay; thence continuing South 52° 27' West a distance of 265.83 feet, more or less; thence South 79° 48' 30" West a distance of 830.0 feet to the point of beginning, containing 30.08 acres of land area, more or less, and 3.46 acres of water area, more or less.

TO HAVE AND TO HOLD said leased premises for the term of this lease and upon the conditions as follows:

First. The term of this lease on the aforesaid areas described above and known as "De Anza Point Tourist Area" shall be for fifty years commencing on the sixtieth day after the giving of notice by the lessor that the area above described as Parcel Number One is ready for occupancy, and ending fifty years after said commencement date, subject, however, to the termination of this lease in the manner and for the reasons hereinafter set forth. The lessor hereby agrees to give written notice to the

lessee addressed to Box 63, Bonita, California, immediately upon the completion of lessor's work in filling the area described as Parcel Number One to be occupied by the lessee, and construction of a roadway and other work which may be necessary to prepare said premises for occupancy and development by the lessee as hereinafter set forth. This lease is to commence on the sixtieth day after the giving of the above notice by the lessor and the lessee hereby agrees to take possession, occupy and develop the area above described as Parcel Number One upon receipt of said notice.

The lessor further agrees that it will prepare and make available for possession, occupancy and development by the lessee the area hereinabove described as Parcel Number Two, and that said work on the part of the lessor will be completed on or before the expiration of the second year of the term of this lease, and the lessee agrees to accept for possession, occupancy and development the area described as Parcel Number Two on or before the expiration of the fourth year of the term of this lease.

Second. The term of this lease and its continued existence shall be expressly conditioned in the following respects:

1. The lessee agrees to accept for possession, occupancy and development the area described above as Parcel Number One upon the receipt of the above-mentioned notice that the lessor has completed its work in said area, and the lessee agrees that it will develop said area as a tourist and trailer park area and that it will within one year from the commencement of this lease complete and have ready for occupancy in said area one-hundred (100) trailer units or more.

2. The lessee further agrees that it will during the second year of this lease complete and have ready for occupancy an additional one-hundred (100) trailer units

or more in said area above described as Parcel Number One.

3. The lessee further agrees that it will during the third year of this lease complete and have ready for occupancy an additional one-hundred (100) trailer units or more, said units to be either in Parcel Number One or Parcel Number Two, or both.

4. Lessee further agrees that it will during the subsequent two years of said lease and before the expiration of five years from the date of commencement of this lease complete and have ready for occupancy an additional two-hundred (200) trailer units to be placed either in area number one or area number two.

The lessee hereby agrees and it is mutually understood that within five years of the commencement of this lease the lessee will complete and have ready for occupancy a total of five-hundred (500) trailer units.

Third. The lessee agrees that the leased premises shall be used only and exclusively for the development and operation of a tourist and trailer park area with the accompanying facilities, ousinesses and concessions which may be necessary or desirable in the opinion of the lessee for such a development and operation, including those listed in paragraph "Fourth" of this lease. Whenever the lessee shall desire to install or operate any facilities, businesses and concessions other than those already listed in paragraph "Fourth" of this lease, they shall obtain the approval, in writing, of the City Manager of the lessor. It is expressly understood and agreed that the lessee shall develop the aforementioned accompanying facilities, businesses and concessions primarily for the purpose of serving the patrons, guests, invitees and visitors of the tourist and trailer park area, and they shall not be unnecessarily commercialized. It

is further understood and agreed that the development and operation of said tourist and trailer park area shall be in the manner as outlined in the proposal submitted by the lessee on the 14th of June, 1949, a copy of which is attached hereto and made a part of this lease. It is further understood and agreed that the lessee shall not engage in the sale of "on sale" wine, beer, and other alcoholic beverages, but the lessee is hereby granted permission to engage in the sale of packed or "off sale" wine, beer, and other alcoholic beverages, not to be consumed on or in any store premises or restaurant.

Fourth. As and for the rental and for and in consideration of the leasing aforesaid, lessee agrees to pay to lessor a sum of money calculated and determined on the aggregate total of the percentages hereinafter mentioned or the guaranteed minimum monthly rental, whichever is the greater; the minimum monthly rental to be;

1. During the first year of said lease, the sum of One-hundred Fifty Dollars ($150.00) per month.

2. During the second year of this lease, the sum of One-hundred Fifty Dollars ($150.00) per month.

3. During the third year of said lease, the sum of Two-hundred Dollars ($200.00) per month.

4. During the fourth year of said lease, the sum of Three-hundred Dollars ($300.00) per month.

5. During the fifth year of said lease, the sum of Four-hundred Dollars ($400.00) per month.

6. During the sixth year of said lease, the sum of Five-hundred Dollars ($500.00) per month.

7. Each year thereafter, the sum of Five-hundred Dollars ($500.00) per month.

The sum per month, hereinabove mentioned, to be calculated and determined on the percentage basis, shall be calculated and determined as follows, based upon revenues and gross income received:

Five per cent (5%) of the gross revenue of trailer park rentals.

Two per cent (2%) of the gross revenue of any store operated on said premises.

One per cent (1%) of the gross revenue of trailer and boat sales and services on said premises.

Two per cent (2%) of the gross revenue of any fountain operated on said premises.

Two per cent (2%) of the gross revenue of any beauty shop operated on said premises.

Five per cent (5%) of the gross revenue from any guest rooms operated on said premises.

Seven per cent (7%) of any boat slip and boat rentals operated on said premises.

One cent ($.01) per gallon of gasoline and Five cents ($.05) per gallon of oil on all service station sales of gasoline and oil, and two per cent (2%) on all allied sales in said service station operation.

Two per cent (2%) of all gross receipts on all other sub-operations conducted as permitted by law on the leased premises.

It is expressly understood and agreed that in all cases where a percentage is required to be calculated and paid on revenue received from any operation, concession or facility, such percentage shall be calculated and paid whether the revenue be received by the lessee or by any sublessee or concessionaire, and that all revenue received by a sublessee or concessionaire shall be considered as gross revenue of the lessee for the purposes of calculating any percentage hereunder to be paid by lessee to the City, less federal, state and municipal taxes whenever the seller is required by law to collect the tax from the purchaser and file a report of the amount collected.

In order to determine and provide for the payment of the rental hereinabove mentioned, lessee agrees that it will at all times during the life of this lease keep in The City of San Diego true, accurate and complete records, in a form satisfactory to the lessor, of all receipts and revenues from sales and rentals, and that in the event of any sublease by lessee, the lessee shall require that any sublessee conducting any sub-operation, concession, or facility shall keep in The City of San Diego true, accurate and complete records in a form satisfactory to lessor of all receipts and revenues from sales and rentals, and that such sublessee shall certify the accuracy and completeness of their records in a manner acceptable to the City.

The lessee expressly agrees that not later than the fifteenth day of each month during the life of this lease it will render a statement to the lessor showing the amount of sales and rentals made by lessee and all of its sublessees during the preceding month, which statement shall show an itemized calculation in accordance with the above classification of percentages on forms prescribed by the City, and will show the total amount payable to the lessor as hereinabove provided, and that lessee will accompany the same with a remittance of the amount so shown to be due. Lessee further agrees that each year during the life of this lease when percentage revenue shall be due and payable to the City as herein provided, it will render a statement to lessor showing a yearly summary and review of the operations and revenues of lessee and its sublessees, and that such statement shall be made in a form satisfactory to lessor, and within thirty (30) days from the expiration of each leasehold year. Lessee further agrees that the lessor shall, through its duly authorized agents and representatives, have the right at any and all reasonable times to examine the records of lessee and its sublessees for the purpose of determining the accuracy thereof and of the monthly and yearly statements hereinabove required to be made.

It is further mutually agreed that the rental to be paid for and in consideration of this leasing may be reviewed at the expiration of each five-year period of this lease, and said rental may be changed by mutual agreement of all the parties to this lease, otherwise said rental shall remain the same as fixed in paragraph "Fourth" of this lease.

Fifth. It is mutually agreed that nothing in this lease shall be construed as making the lessee the agent or the employee of The City of San Diego for any purpose, nor as creating between the lessor and the lessee a relationship of partnership or joint venture.

Sixth. The lessee agrees that it will operate the leased premises as a trailer park and tourist area and associated facilities continuously and without interruption after such premises are open for operation and during the entire term of this lease. It is hereby understood that the lessee's operation under this lease shall be subject to any war emergency or act of God making it impossible or impracticable for the lessee to fulfill its obligations under the terms and conditions of this lease. In the event that any war emergency or act of God shall make it impossible or impracticable to operate under this lease, then in that event if the lessee desires to continue to remain in the possession under this lease, said lessee hereby agrees to pay, and the lessor agrees to accept as rental payment during such period, one-half of the guaranteed minimum monthly rental described in the "Fourth" paragraph of this lease or the sum per month calculated and determined on the percentage basis in said "Fourth" paragraph, whichever is the greater. Lessee further agrees that it will, at its own expense, keep and maintain the leased premises and all improvements of any kind which may be installed or made thereon by lessee or any sublessee, in good and substantial repair and condition, and that it will make all necessary repairs and alterations thereto, except as hereinafter provided.

Lessee further agrees that it will at all times keep the leased premises and all improvements thereon in a neat and sanitary condition and free and clear of debris of any nature, and that it will dispose of any and all garbage, trash, and other waste in a manner satisfactory to lessor. Lessee further agrees to operate the property in such manner as not to create or permit any nuisance, and that it will not permit any gambling devices or gambling concessions of any kind to be operated on the leased premises, and that it will not permit any lewd or immoral shows or other objectionable conduct on said premises.

Seventh. The lessor hereby agrees to prepare the above-described areas so that they may be occupied by the lessee as a tourist and trailer park area.

Lessor agrees to fill said areas with suitable material and in such a manner to provide adequate surface drainage for the improvements to be placed thereon by the lessee. The lessor agrees to cover said areas with a dirt fill of not less than six inches (6").

The lessor further agrees to construct an adequate roadway connecting the leased premises with Pacific Highway.

The lessor agrees to provide all the utility services as are customarily provided by the lessor, such as sewer and water lines of adequate size and type to the property line of the leased premises to be occupied by the lessee and in such a manner as to enable the lessee to connect with and utilize said services. The lessor agrees to provide rights-of-way to privately-owned utility companies so that said utility companies may furnish services to the leased premises. Lessor further agrees to provide a hydrant adjacent to the leased premises and to provide the customary fire, police and rescue services usually provided by the lessor to adjacent areas.

Eighth. The lessee agrees that the lessor shall at all times, during ordinary business hours, have the right to enter

upon and inspect said premises, and in the event that the lessee shall fail to maintain said premises in a safe, healthy and satisfactory condition, the lessor shall have the right after ten-days written notice to the lessee to have any necessary maintenance work done for and at the expense of the lessee, and the lessee hereby agrees to pay promptly any and all costs incurred by the lessor in having such necessary maintenance work done in order to keep said premises in a safe and healthy condition.

Ninth. It is mutually agreed that title to all buildings and improvements to be erected or installed upon the premises, as stated aforesaid, shall remain and be in the name of the lessee; provided, however, that at the termination of this lease for any reason whatsoever, or at the expiration thereof, the lessor may buy from the lessee all buildings, structures and equipment upon the premises at their then value, said value to be determined at that time by an agreement of the parties hereto, or if they are unable to arrive at a mutual figure, then and in that event by arbitration, each party to appoint one arbitrator, and these two arbitrators to appoint a third arbitrator, and the matter shall be referred to the three arbitrators for determination of the value to be paid for said property in the event the lessor may decide to buy the same. Both parties hereto agree to abide by and be governed by the decision of the arbitrators as to the price of the buildings, structures and equipment which the lessor shall pay to the lessee in the event the lessor exercises its option to purchase said buildings, structures and equipment; provided, further, that in the event the lessor shall not exercise its option to purchase said buildings, structures and equipment of the lessee at the termination of this lease for any reason whatsoever, or at the expiration thereof, and the lessee has an opportunity to sell said buildings, structures and equipment to a third party, then and in that event the lessee shall offer the lessor the first opportunity to purchase said buildings,

structures and equipment at the same price being offered to and acceptable by the lessee.

Tenth. The lessee agrees to pay before delinquency all taxes assessed or levied upon the lessee or the leased premises by reason of any improvements of any nature whatsoever installed or maintained by lessee, or by reason of the business or other activities of lessee upon or in connection with the said leased premises, and to pay any fees imposed by law for licenses or permits for any business or activities of lessee upon the leased premises, or under this lease, and to pay before delinquency any and all charges for any utility services to or for the benefit of the leased premises.

Eleventh. It is expressly agreed that in the event the leased premises or the buildings erected thereon by lessee, or any substantial portion thereof, be destroyed or damaged by fire, earthquake, windstorm, tidal wave, or similar act of nature, the lessee may at its option either terminate this lease or repair said premises or buildings or substantial portion thereof which may be destroyed; provided, only, that if in such event lessee should desire to terminate this lease by reason of such destruction, lessee shall notify lessor in writing within not more than thirty (30) days from the date of such destruction of its intention to so terminate, and at the option of the lessor, the lessee shall remove all debris.

Twelfth. Except as provided in paragraph "Twenty-fifth" hereof, the lessee agrees not to assign this lease in whole or in part to any person, firm or corporation, without the consent in writing of the City Manager first had and obtained; upon the understanding, however, that such written consent will not be withheld provided:

1. The assignee's financial responsibility is established to the satisfaction of the City Manager;

2. That the assignee undertakes and agrees, as a primary liability, to assume and be bound by each and

every of the terms and provisions of the lease and any and all amendments to or modifications thereof then in effect; and

3. That the management, and in case the assignee is a corporation, the officers and directors thereof, are satisfactory to and approved by the City Manager.

The lessee also agrees not to sublet the whole or any part of the leased premises, and agrees not to grant any concessions upon the demised premises, without the consent in writing of the City Manager in each instance first had and obtained, upon the understanding, however, that such written consent will not be withheld by the City Manager if such sublessee or such concessionaire, as the case may be, demonstrates his or its financial responsibility to the satisfaction of the City Manager; and, provided further, that no such sublease or concession made by the lessee shall in anywise excuse the lessee from its obligation to the lessor under the terms and provisions of the lease.

Thirteenth. It is mutually agreed that in the event the lessee is adjudicated bankrupt or insolvent or makes any assignment for the benefit of creditors, or in the event of any judicial sale of the interest of the lessee under this lease, this lease shall at the option of the lessor immediately terminate, and all rights of the lessee hereunder shall immediately cease and terminate unless the cause of said bankruptcy, insolvency or assignment or judicial sale be removed within thirty (30) days from the date thereof.

Fourteenth. The lessee agrees that the lessor, its agents, officers and employees, shall not be nor be held liable for any damage to the goods, properties or effects of the lessee, or any of the lessee's representatives, agents, employees, guests, licensees, invitees, or of any other person whatsoever, nor for personal injuries to or deaths of them or any of them, whether caused by or resulting from any act or omission of lessee, its

agents, officers or employees, sublessees, or the agents, officers or employees of any sublessee, or from any defect in any part of the leased premises. The lessee further agrees to indemnify and save free and harmless the lessor and its authorized agents, officers and employees against any of the foregoing liabilities and any costs and expenses incurred by the lessor on account of any claim or claims therefor.

Fifteenth. The lessee agrees to take out and maintain public liability insurance with an insurance carrier licensed and authorized to do business in the State of California and satisfactory to lessor, and naming the lessor as an additional insured, to protect against loss from liability imposed by law for damages on account of bodily injury, including death resulting therefrom, suffered or alleged to be suffered by any person or persons whatsoever resulting directly or indirectly from omissions, acts or activities of the lessee or any person acting for it or under its control or direction, or any person authorized by it to use the leased premises, and also to protect against loss from liability imposed by law for damages to any property of any person caused directly or indirectly by or from the omission, acts or activities of the lessee or any person authorized by it to use the leased premises.

Sixteenth. The lessee further agrees to take out and maintain the required policy or policies of Workmen's Compensation Insurance covering employees of the lessee, and to require any sublessee or concessionaire authorized by lessee to use the leased premises to take out and maintain the required policies of Workmen's Compensation Insurance covering the employees of such sublessee or concessionaire. The lessee further agrees to take out and maintain adequate policies of insurance insuring the buildings and improvements on the leased premises against destruction or damage by fire, earthquake or windstorm. Copies of each of the policies mentioned herein shall

be filed with the City Manager of lessor and shall be satisfactory in form to him.

Seventeenth. It is mutually understood and agreed that if any default be made in the payment of the rental herein provided, or in the performance of the covenants, conditions or agreements hereof, and such default shall not be cured within sixty (60) days after written notice thereof, the lessor shall have the option to immediately terminate this lease; and that in the event of such termination the lessee shall have n o further rights hereunder, and the lessee shall thereupon forthwith remove from said premises and shall have no further right or claim thereto, and the said lessor shall immediately thereupon, without recourse to the courts, have the right to reenter and take possession of the leased premises.

Eighteenth. The lessee agrees that upon the termination of this lease by the expiration thereof, or the earlier termination as by the terms of this lease provided, or, in the event this lease is cancelled by mutual consent of the parties hereto, the lessee will peaceably yield up and surrender the leased premises and the whole thereof in as good condition, subject to normal and ordinary change and alteration resulting from the use of such premises as herein provided, as the same may be at the time the lessee takes possession thereof, and to allow the lessor to take peaceable possession thereof, subject to the terms and conditions as set forth in paragraph "Ninth" of this lease, whereupon the lessee's obligation to pay rent upon said premises shall cease. The lessee further agrees that upon the expiration of thirty-five years of this lease, the lessor in lieu of condemnation may take the above-described premises for any condemnable public purpose and in that event the lessor shall pay to the lessee for the premises so taken the market value of the improvements placed upon the demised premises by the lessee or by its successor, provided that no allowance

shall be made for good will, said market value to be established and agreed upon pursuant to paragraph "Ninth" of this lease. The notice of the City's election to so terminate the lease should be in writing and given to the person, firm or corporation then holding the lease, not later than one year prior to the effective date of said notice.

Nineteenth. It is mutually agreed that if the lessee shall hold over after the expiration of this lease for any cause, such holding over shall be deemed a tenancy from month to month, only on the same terms, conditions and provisions as are contained herein and at a rental at the rate prevailing during the final yearly period of this lease, unless other terms, conditions and provisions and rental be agreed upon in writing by the lessor and the lessee.

Twentieth. It is mutually agreed that any waiver by the lessor of any breach of any one or more of the covenants, conditions or agreements of this lease shall not be nor be construed to be a waiver of any subsequent or other breach of the same or any other covenant, condition or agreement of this lease, nor shall any failure on the part of the lessor to require or exact full and complete compliance with any of the covenants, conditions or agreements of this lease be construed as in any manner changing the terms hereof or to estop the lessor from enforcing the full provisions hereof, nor shall the terms of this lease be changed or altered in any manner whatsoever other than by written agreement of the lessor and the lessee.

Twenty-first. The lessee agrees that in all activities on or in connection with the leased premises and Mission Bay, and in all uses of said premises and improvements thereon, including the making of any alterations, changes or repairs and the installation of any improvements whatsoever, it will abide by and conform to all rules and regulations prescribed by the City Charter of The City of San Diego, any ordinances of said City,

including the Building Code thereof, and any applicable laws or rules or regulations of the State of California or the United States of America, or any agency thereof, as any of the same may now exist or be hereafter promulgated or amended.

Twenty-second. It is mutually understood and agreed that all electrical conductors and cables, communication and signal circuits used on the leased premises shall not be placed in the open overhead. They shall be placed in accordance with good current practice, and shall not be unsightly. Area lighting necessary shall be accomplished insofar as possible by the use of ornamental standards or any other approved method.

Twenty-third. It is mutually agreed that any notice or notices provided for by this lease or by law to be given or served upon the lessee may be given or served by letter addressed to M. F. Purdy, Box 63, Bonita, California, and Mrs. Lila Witcher, Star Route, Lilac Road, Escondido, California, deposited in the United States mail, or may be served personally upon the said lessee or any person hereafter authorized by it in writing to receive such notice; and that any notice or notices provided by this lease or by law to be served upon the lessor may be given or served by letter addressed to the City Manager of lessor, in the Civic Center, San Diego 1, California, deposited in the United States mail, or may be served personally upon said City Manager or his duly authorized representative, and that any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the parties so served.

Twenty-fourth. It is mutually agreed that time is of the essence of each and all of the terms and provisions of this lease and that this lease shall inure to the benefit of and be binding upon the parties hereto and any successors of the lessee as fully and to the same extent as though specifically mentioned in each instance, and that all covenants, stipulations and agreements in this lease shall extend to and bind any assigns or sublessees of the lessee.

Twenty-fifth. The lessor hereby agrees, in the event the above-named lessees should form a corporation in which the major and principle stockholders are the above-named lessees, to consent to the transfer to said corporation by assignment sale or purchase any or all of the interest of the lessees herein named. The lessees further agree, in the event such a corporation is formed, that any and all stock transfers thereafter made by said corporation will be upon written notice given to the lessor.

Twenty-sixth. It is hereby understood and agreed that the lessee will use the approximate eleven (11) acres, which are California State Park Lands under lease to The City of San Diego by agreement entered into the 29th day of June, 1945, in a manner consistent with the purposes described in said agreement between the State Park Commission of the State of California and the City of San Diego, and that it will so operate and manage said area in a manner consistent with recreational purposes, and will not unnecessarily commercialize said areas.

Twenty-seventh. The lessor hereby agrees that the lessee shall have and is hereby granted the exclusive right and privilege to conduct a trailer park in the Mission Bay Park Area during the period of the first ten years of this lease. Thereafter, the lessor further agrees that in the event the lessor deems it advisable to develop other trailer parks in the Mission Bay Area the lessee is hereby granted the right of first refusal to operate said additional trailer parks, providing the lessee agrees to operate said additional trailer parks on terms equal to the terms and conditions of any other bidder and on terms and conditions similar to those set forth in this lease and to be mutually agreed upon. The lessor further agrees that so long as this lease is in effect the lessor will not develop nor lease to any other lessee any area within one mile distant from the leased premises for trailer park purposes.

Twenty-eighth. The lessor hereby further agrees to give to the lessee the right to maintain a decorative neon sign for directional purposes alongside Highway 101. The area and terms and conditions under which said sign shall be placed and maintained shall be at the discretion of the City Manager and Planning Director of The City of San Diego.

IN WITNESS WHEREOF this lease agreement is executed by The City of San Diego, acting by and through its City Manager pursuant to Resolution No. [illegible] authorizing such execution, and the lessee having caused this lease agreement to be executed the day and year first hereinabove written.

THE CITY OF SAN DIEGO

By _____
City Manager

_____

_____
Lessees

I HEREBY APPROVE the form and legality of the foregoing lease this 1 day of [illegible], 1951.

J. F. Du PAUL, City Attorney,

By _____
Deputy City Attorney.

COPY

TENTH AMENDMENT TO LEASE AGREEMENT

THIS AMENDMENT executed by and between THE CITY OF SAN DIEGO, a municipal corporation (CITY), LESSOR, and DE ANZA MOBIL ESTATES, a California limited partnership, LESSEE, successor in interest to M. F. Purdy and Lila Witcher.

WHEREAS, the parties heretofore have entered into that certain Lease Agreement, dated May 18, 1951, filed as Document 433606 in the Office of the City Clerk, as amended by Documents 458065, 495332, 524548, 535711, 550308, 595193, 606880, 647346 and 730521 filed in said Office of the City Clerk.

WHEREAS, the parties hereto now desire to further amend said Lease Agreement in the manner herein set forth;

NOW, THEREFORE, CITY and LESSEE, hereby agree:

1. That Paragraph Fourth of said Lease Agreement is hereby deleted in its entirety and the following substituted therefor:

Fourth.

A. RENTAL

Commencing January 1, 1982, LESSEE shall pay to CITY, monthly in arrears and prior to the last day of the calendar month following that month in which the revenue subject to rent was earned, a sum of money equal to the total of the percentage of all gross income derived from all operations on the demised premises, including, but not limited to the following:

DOCUMENT NO. RR-255747
FILED JAN 2[illegible] 1982
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

(1) Ten percent (10%) of gross income from mobile home space rental, recreation vehicle space rental ~~and all other similar space rental~~, subject to adjustment as provided in Section B hereof.

(2) Three percent (3%) of gross income from general store operations.

(3) One percent (1%) of gross income from mobile home sales.

(4) One percent (1%) of gross income from boat sales.

(5) Three percent (3%) of gross income from snack bar and fountain operations.

(6) Seven percent (7%) of gross income from beauty shop operations.

(7) Seven percent (7%) of gross income from guest rooms.

(8) Twenty percent (20%) of gross income from boat slip and mooring rentals.

(9) Seven percent (7%) of gross income from boat rentals, dry boat storage and related marine services, and recreational vehicle storage.

(10) Three percent (3%) of gross income from gasoline, oil, propane, diesel and any other petroleum fuel sales.

(11) Three percent (3%) of gross income from allied service station sales and operations of a Recreation Hall.

(12) Two percent (2%) of gross income from gas and electricity sales.

(13) Coin operated machines. Any amount due CITY from income accruing to the LESSEE from coin-operated machines and telephones in which the LESSEE has no ownership equity shall be computed in accordance with percentage rates set forth in this section on the basis of income received by LESSEE, rather than the total gross income of said machines or telephones. Provided, however, that in the event the total gross income of said machines and/or telephones exceeds the amount of Five Hundred Dollars ($500) per month, then the total amount due CITY from income derived from said machines and/or telephones shall be computed under said percentage rates as set forth in this Section on the basis of the total gross income of said machines and/or telephones, rather than on the income received by LESSEE.

(14) Seven percent (7%) of the gross income from any and all activities, operations and suboperations allowed under this lease and not otherwise provided for in this section. Provided, however, that the CITY Manager and LESSEE may mutually agree in writing to another percentage rate or flat rate of rent for each such other service(s) or operation(s) supplementary

to the permitted use(s) as set forth in this lease and approved in writing by the City Manager. In the event the parties cannot reach an agreement on the percentage rent to be paid to CITY, then such activities, service(s), or operation(s) shall not be entered into by LESSEE.

Provided, however, in the event that the total amount of said percentage rent paid to CITY by LESSEE in any one year ending upon the day prior to the anniversary date of this agreement, November 24, is less than the sum of Two Hundred Thousand Dollars ($200,000), hereinafter referred to as "minimum rent" or less than any adjustment thereof as provided in Section C, hereof, then LESSEE shall pay to CITY within sixty (60) days of said anniversary date, the difference between the amount actually paid and the minimum rent.

Provided, further, if the anniversary date and the date upon which LESSEE is required to commence payment of a percentage of gross income do not coincide, then said minimum rent and percentage rents for that year shall be prorated to the anniversary date, which shall then become the computation date thereafter.

B. PERCENTAGE RENTAL ADJUSTMENTS. Commencing January 1, 1985, LESSEE shall pay to CITY 15 percent of gross income from mobile home space rental, recreational space rental ~~and all other similar space rental~~ and commencing January 1, 1988, LESSEE shall pay to CITY 20 percent of gross income from such space rental.

C. MINIMUM RENT ADJUSTMENTS. On January 1, 1985 and on January 1 of each three-year period thereafter, during the remaining term of this lease, the minimum rent for the ensuing three-year period shall be adjusted to 80 percent of the average annual rent paid to CITY during the three years preceding the minimum rental adjustment date. Provided, however, no such adjustment may result in a decrease in minimum rent.

D. DELINQUENT RENT. In the event LESSEE fails to pay the applicable rents or audit deficiencies when due, then LESSEE shall pay to CITY, in addition to the delinquent rent, a sum of money equal to FIVE PERCENT (5%) of said delinquent rent; provided, however, in the event said delinquent rent is still unpaid after fifteen days of becoming delinquent, then LESSEE shall pay to CITY, instead of said Five Percent, a sum of money equal to TEN PERCENT (10%) of said delinquent rent. It is the intent of this provision that CITY shall be compensated by such additional sums for loss resulting from rental delinquency and costs to CITY of servicing the delinquent account. The City Manager, at his option, may for good cause waive any such delinquency compensation required herein, upon advance written application of LESSEE.

E. GROSS INCOME. Gross income, as used in this lease, shall include all income resulting from occupancy of the leased premises from whatever source derived whether received or to become due. Provided, however, gross income shall not include federal, state or municipal taxes collected from the consumer (regardless of whether the amount thereof is stated to the consumer as a separate charge) and paid over periodically by LESSEE to a governmental agency accompanied by a tax return or statement as required by law. The amount of such taxes shall be shown on the books and records elsewhere herein required to be maintained. The aforesaid percentage rent shall be calculated and paid by LESSEE on the basis of said gross income whether the income is received by LESSEE or by any sublessee, permittee, licensee, or other party, or their agents and all gross income received by any sublessee, permittee, licensee, or other party as a result of occupancy of said premises or the operation thereof shall be regarded as gross income of LESSEE for the purpose of calculating the percentage rent hereunder required to be paid by LESSEE to CITY.

F. FINANCIAL RECORDS MAINTENANCE.

(1) LESSEE shall keep true, accurate and complete records in a manner and form satisfactory to CITY from which CITY can at all reasonable times determine the nature and amounts of income subject to rental from the operation of the leased premises. Such records shall show all transactions relative to the conduct of the operation, and transactions shall be supported by documents of orginal entry such as sales slips, cash register tapes, purchase invoices and tickets issued or other means satisfactory to CITY. All sales or rentals of merchandise and services rendered shall be recorded by means of cash register system which automatically issues a customer's receipt or certifies the amount recorded on a sales slip. Said cash register shall have a locked-in total which is constantly accumulating, which total cannot be reset, and at the option of the CITY, a constantly locked-in accumulating printed transaction counter which cannot be reset, and/or a printed detailed audit tape located within the register. Complete beginning and ending cash register reading shall be made a matter of daily record. Together with each rental payment, LESSEE shall render to CITY a detailed statement as to the source of the receipts showing all gross income of the preceding calendar month together with the amount payable to CITY as hereinabove provided and shall accompany same with a remittance of the amount so shown to be due CITY. The City Auditor and Comptroller shall audit the business of LESSEE, its agents, sublessees,

concessionaires or licensees operating on said premises at least once every three (3) years and more frequently as deemed appropriate by CITY. In the event such audit discloses that the percentage rental required for the preceding lease year(s) exceeds the amount of percentage rental paid to CITY by LESSEE during said period, LESSEE shall immediately pay to CITY the amount of such deficiency. Also, in the event said audit discloses that the percentage rental on the annual gross sales for the preceding lease year(s) is less than the amount of minimum annual rent required therefor, LESSEE shall pay to CITY the amount of such deficiency within thirty (30) days of notification thereof by CITY subject to Subparagraph (4) hereof. In the event that such audit discloses that the percentage rental required for the preceding lease year(s) is less than the amount of percentage rents paid to CITY during said period, then upon confirmation of said audit findings by CITY through means provided in Subparagraph (3) hereof, the amount of overpayment shall be credited against equal amounts of monthly rents due CITY during the succeeding payments until said overpayment is fully credited. Any such overpayment occurring in the last lease year shall be refunded by CITY within thirty days of confirmation by CITY of said audit findings.

(2) LESSEE shall also maintain accurate records of actual and projected operating expenses and revenue, and such other operating information as CITY from time to time deems necessary and LESSEE shall submit such information to CITY upon request.

(3) All of said records and accounts relating to operations hereunder shall be maintained separate from all other accounts not relating to the operation of the

leased premises and shall be made available to CITY at one location within the limits of the City of San Diego. CITY shall have, through its duly authorized agents or representatives, the right to examine and audit said records and amounts at any and all reasonable times. Any additional sums due CITY as determined by CITY'S audit are due and payable as provided herein.

(4) In the event that such audit discloses that the rent for the audited period has been underpaid in excess of five percent (5%) of the total required rent, then LESSEE shall pay CITY ten percent (10%) of the amount by which said rent was underpaid in addition to the unpaid rents so shown to be due CITY as compensation to CITY for administrative cost and loss of interest.

2. That Paragraphs Fifteenth and Sixteenth of said Lease Agreement are hereby deleted in their entirety and the following substituted therefor:

Fifteenth. Insurance Coverage. During the entire term of this lease, LESSEE agrees to procure and maintain public liability insurance which names CITY as an additional insured with an insurance company satisfactory to CITY licensed to do business in California to protect against loss from liability imposed by law for damages on account of bodily injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever, resulting directly or indirectly from any act or activities of LESSEE, its sublessees or any person acting for LESSEE or under its control or direction, and also to protect against loss from liability imposed by law for damages

to any property of any person caused directly or indirectly by or from acts or activities LESSEE, or its sublessees, or any person acting for LESSEE, or under its control or direction. Such property damage and public liability insurance shall also provide for and protect CITY against incurring any legal cost in defending claims for alleged loss. Such public liability and property damage insurance shall be maintained in full force and effect during the entire term of this lease in the amount of not less than ONE MILLION DOLLARS COMBINED SINGLE LIMIT LIABILITY. LESSEE agrees to submit a policy of said insurance to the CITY on or before the effective date of this agreement indicating full coverage of the contractual liability imposed by this agreement and stipulating that the insurance company shall not terminate, cancel or limit said policy in any manner without at least thirty days prior written notice thereof to CITY. If the operation under this agreement results in an increased or decreased risk in the opinion of the City Manager, then LESSEE agrees that the minimum limits hereinabove designated shall be changed accordingly upon request by the City Manager. LESSEE agrees that provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which the LESSEE may be held responsible for the payment of damages to persons or property resulting from LESSEE'S activities, the activities of its sublessees or the activities of any person or persons for which LESSEE is otherwise responsible.

LESSEE also agrees to procure and maintain during the entire term of this lease, a policy of fire, extended coverage, and vandalism insurance on all permanent property of an insurable nature located upon the leased premises. Said policy shall name the CITY as an additional insured and shall be written by an insurance company satisfactory to CITY licensed to transact

business in the State of California and shall be in an amount sufficient to cover at least 80 percent of the replacement costs of said property.

LESSEE agrees to submit a certificate of said policy to the CITY on or before the effective date of this lease amendment. Said policy shall contain a condition that it is not to be terminated or cancelled without at least thirty (30) days prior written notice to CITY by the insurance company. LESSEE agrees to pay the premium for such insurance and shall require that any insurance proceeds resulting from a loss under said policy are payable jointly to CITY and LESSEE and said proceeds shall constitute a trust fund to be reinvested in rebuilding or repairing the damaged property or said proceeds may be disposed of as specified in Paragraph Sixteenth. Waste, Damage or Destruction, hereof; provided, however, that within the period during which there is in existence a mortgage or deed of trust upon the leasehold, then and for that period all policies of fire insurance, extended coverage and vandalism shall be made payable jointly to the mortgagee or beneficiary, the named insured, and CITY, and shall be disposed of jointly by the parties for the following purposes:

A. As a trust fund to be retained by said mortgagee or beneficiary and applied in reduction of the debt secured by such mortgage or deed of trust with the excess remaining after full payment of said debt to be paid over to LESSEE and CITY to pay for reconstruction, repair, or replacement of the damaged or destroyed improvements in progress payments as the work is performed. The balance of said proceeds shall be paid to LESSEE.

Provided, further however, nothing herein shall prevent LESSEE, at its option and with the approval of said mortgagee or beneficiary, from filing a Faithful Performance Bond in favor of said mortgagee or beneficiary and CITY in an amount equivalent to said insurance proceeds in lieu of surrendering said insurance proceeds to said mortgagee or beneficiary, and CITY.

B. In the event this lease is terminated by mutual agreement and said improvements are not reconstructed, repaired or replaced, the insurance proceeds shall be jointly retained by CITY and said mortgagee or beneficiary to the extent necessary to first discharge the debt secured by said mortgage or deed of trust and then to restore the premises in a neat and clean condition. Said mortgagee or beneficiary shall hold the balance of said proceeds for CITY and LESSEE as their interests may appear.

LESSEE agrees to increase the limits of liability when, in the opinion of CITY, the value of the improvements covered is increased, subject to the availabiltiy of such insurance at the increased limits. LESSEE agrees, at his sole expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of reasonable fire and public liability insurance covering said premises, buildings and appurtenances.

The LESSEE further agrees to take out and maintain the required policy or policies or Workmen's Compensation Insurance covering employees of the LESSEE and to require any Sublessee or Concessionaire authorized by LESSEE to use the leased premises to take out and maintain the

required policies of Workmen's Compensation Insurance covering the employees of such Sublessee or Concessionaire.

Sixteenth. Waste, Damage or Destruction. LESSEE agrees to give notice to the CITY of any fire or other damage that may occur on the leased premises within ten days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash and rubbish in a manner satisfactory to the CITY. If the leased premises shall be damaged by any cause which puts the premises into a condition which is not decent, safe, healthy and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the premises to the condition which existed prior to said damage, or LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the premises in accordance with plans and specifications previously submitted to the CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, using for either purpose the insurance proceeds as set forth in Subsection B of Paragraph Fifteenth, Insurance Coverage, hereof.

LESSEE agrees that preliminary steps toward performing repairs, restoration or replacement of the premises shall be commenced by LESSEE within thirty days and the required repairs, restoration or replacement shall be completed within a reasonable time thereafter. CITY may determine an equitable deduction in the minimum annual rent requirement for such period or periods that said premises are untenantable by reason of such damage.

3. That Paragraph Eighteenth of said Lease Agreement is hereby deleted in its entirety and the following substituted therefor:

Eighteenth. Peaceable Surrender. The LESSEE agrees that upon the termination of this lease by the expiration thereof, or the earlier termination as by the terms of this lease provided, or, in the event this lease is cancelled by mutual consent of the parties hereto, the LESSEE will peaceably yield up and surrender the leased premises and the whole thereof in as good condition, subject to normal and ordinary change and alteration from the use of such premises as herein provided, as the same may be at the time the LESSEE takes possession thereof, and to allow the LESSOR to take peaceable possession thereof, subject to the terms and conditions as set forth in paragraph "Ninth" of this lease, whereupon the LESSEE'S obligation to pay rent upon said premises shall cease.

4. That Paragraph Twenty-third of said Lease Agreement is hereby deleted in its entirety and the following substituted therefor:

Twenty-third. Administration and Notices. Control and administration of this lease is under the jurisdiction of the City Manager of CITY as to CITY'S interest herein and any communication relative to the terms or conditions or any charges thereto or any notice or notices provided for by this lease or by law to be given or served upon CITY may be given or served by registered letter deposited in the United States mails, postage prepaid, and addressed to the City Manager, Attention Property Director, City Administration Building, 202 "C" Street, San Diego, California 92101. Any notice or notices provided for by this lease or by law to be given or served upon LESSEE, Mortgagee, Trustee or Beneficiary may be given or served by depositing in the United States mails, postage prepaid, a letter

addressed to said LESSEE at the leased premises or at such other address designated in writing by LESSEE, Mortgagee, Trustee or Beneficiary or may be personally served upon them or any person hereafter authorized by them to receive such notice. Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the principals of the parties so served upon personal service or forty-eight hours after mailing in the manner required herein.

5. That the following Paragraph Thirty-second is hereby added to said Lease Agreement as part thereof:

Thirty-second. Affirmative Action. LESSEE agrees to take affirmative action to improve employment opportunities of minorities and women. When applicable, LESSEE agrees to abide by the Affirmative Action Program for Lessees as it now existing or is hereafter amended. A copy of the program, effective as of the date of this agreement, is on file in the Office of the City Clerk and by this reference is incorporated herein. Minorities are presently defined as Mexican-American, Black, Filipino, American Indian and Asian/Oriental. The goal of this program shall be the attainment of the employment of minorities and women in all areas of employment in a total percentage of employment approximately equal to the total level of minority and women employment as established by the CITY for its Affirmative Action Program each year.

6. That the following Paragraph Thirty-third is hereby added to said Lease Agreement as a part thereof:

Thirty-third. Eminent Domain. In the event the leased premises or any part thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, then the interests of CITY and LESSEE (or Beneficiary or Mortgagee if there

is a Trust Deed or Mortgage then in effective), in the award and the effect of the taking upon this Lease Agreement shall be as follows:

A. In the event of such taking of only a part of the leased premises, leaving the remainder of said premises in such location and in such form, shape and size as to be used effectively and practicably in the opinion of CITY for the conduct thereon of the operations permitted hereunder, this lease shall terminate and end as to the portion of the leased premises so taken as of the date title to such portion vests in the condemning authority, but shall continue in full force and effect as to the portion of the leased premises not so taken and from and after such date the contract rent, or in the event there is a minimum rent specified herein, then the minimum rental required by this lease to be paid by LESSEE to CITY shall be reduced in the proportion to which the value of the leased premises so taken bears to the total value of the demised premises; provided, however, CITY shall have the right, with the consent of LESSEE, to substitute like adjacent property and maintain the rent schedule without diminution.

B. In the event of the taking of only a part of the leased premises, leaving the remainder of said premises in such location, or in such form, shape or reduced size as to render the same not effectively and practicably usable, in the opinion of CITY, for the conduct there on of the operations permitted hereunder, this lease and all right, title and interest thereunder shall cease on the date title to said premises or the portion thereof so taken vests in the condemning authority.

C. In the event the entire leased premises are so taken, this lease and all of the right, title and interest thereunder shall cease on the date title to said premises so taken vests in the condemning authority.

D. In the event of any taking under Subparagraphs A, B, or C, hereinabove, the only portion of any award of compensation which shall be paid to LESSEE shall be the Fair Market Value of LESSEE'S interest which is taken by the condemning agency. ~~It is the intention of this provision that LESSEE shall not in any condemnation receive any bonus or penalty by reason of LESSEE'S contractural rights in connection with the property condemned.~~

E. Notwithstanding the foregoing provisions of this section, CITY may, in its discretion and without affecting the validity and existence of this lease, transfer the CITY'S interests in said premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. In the event of such transfer by CITY, LESSEE shall retain whatever rights it may have to recover from the said authority the Fair Market Value of LESSEE'S interest taken by the authority.

7. That the following Paragraph Thirty-fourth is hereby added to said Lease Agreement as a part thereof:

Thirty-fourth. Public Access. LESSEE agrees to provide public access to and around the premises on existing roads and pathways during daylight hours, subject to reasonable security measures which have the prior written approval of the City Manager. LESSEE further agrees to construct a pedestrian and bicycle pathway around the leased premises in accordance with CITY approved specifications at CITY'S cost for use by the general public during daylight hours, subject to the availability of City funds. LESSEE and CITY further

agree that LESSEE shall be given the option to construct a bridge across Rose Creek adjoining said premises in accordance with CITY-approved specifications and at CITY'S cost, subject to CITY'S decision and ability to schedule said construction and subject to the availability of City funds. LESSEE and CITY shall use their best efforts to expedite the approval and completion of said bridge, subject to the public's interests. It is the intention of the parties that the construction costs referred to herein would be payable, all or in part from rents accruing to CITY from LESSEE under this lease and by such other sources as may be agreed to by the parties.

8. The following Paragraph Thirty-fifth is hereby added to said Lease Agreement as a part thereof:

Thirty-fifth. Notice to Tenants. LESSEE shall provide to all present and future occupants of mobile home spaces on the demised premises a copy of Assembly Bill No. 447 of the 1981-82 Regular Session of the California Legislature. In addition, LESSEE shall, in writing, notify all such occupants that they shall not be entitled to and may not claim:

A. Any relocation allowances, benefits, monetary payments or any other rights of any kind or amount at any time whatsoever by reason of, or arising out of, the provisions of the said Assembly Bill 447 or by virtue of any action or inaction of LESSEE or LESSOR pursuant to said Bill; or

B. Any extension by LESSOR or LESSEE of the term of their individual subleases pursuant to any provision of this lease or by reason of, or arising out of, the provisions of AB 447. LESSEE shall also give notice to all such occupants that the date of expiration of this Lease shall be November 23, 2003,

unless sooner terminated in accordance with the terms hereof and that under no circumstances shall any occupants' term be extended beyond November 23, 2003 or said earlier termination date.

9. The following Paragraph Thirty-sixth is hereby added to said Lease Agreement as a part thereof:

"Thirty-sixth. Redevelopment Plan. In consideration of the rental increase provided herein, LESSEE agrees that it will submit and CITY agrees that it will consider a Redevelopment Plan involving that portion of the demised premises which is not being utilitzed for mobile home space rental on the following terms and conditions:

A. LESSEE will prepare and submit a proposed Redevelopment Plan which shall include new or modified uses of the above-described property which are compatible with the purposes of MISSION BAY PARK and the highest and best use of the real property. The Plan shall not require displacement of mobile homes from the demise premises (but may require relocation of mobile homes within the demised premises).

B. LESSEE will provide CITY with a projection of anticipated income to the CITY from the uses proposed in the Redevelopment Plan together with a projection of income from the same premises as utilized at the time that the Plan is submitted.

C. The Plan shall be prepared by individuals or companies acceptable to the CITY. The CITY shall have the right to hire consultants to determine the validity, financial feasibility ard similar considerations with respect to the Plan.

D. The Plan shall be prepared at no cost to the CITY.

E. Prior to approval of the Plan, LESSEE shall be required to provide CITY with financial and other information with respect to any operating entity which might administer the operation of the activities proposed in the Plan in the event the operator of said activities is other than LESSEE.

F. The CITY may, at its sole discretion, accept, reject or modify the Redevelopment Plan and LESSEE agrees to be bound by such ~~determination.~~ acceptance or rejection or to negotiate such modifications.

10. This Tenth Amendment to Lease Agreement shall be effective upon the execution by CITY.

THE CITY OF SAN DIEGO

DATE 1/29/82

By _____
City Manager

DE ANZA MOBILE ESTATES
A California Limited Partnership

Date January 29, 1982

By Herbert M. Gelfand by Aubrey Meyerson, his attorney-in-fact
General Partner
Herbert M. Gelfand
By Aubrey Meyerson his
Attorney-in-Fact

Date _____

By XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXX
General Partner

I HEREBY APPROVE the form and legality of the foregoing Tenth Amendment to Lease Agreement this 29 day of January, 1982.

JOHN W. WITT, City Attorney

By _____
Deputy

RJC:mh
1/22/82

R-255747

STATE OF CALIFORNIA)
)
COUNTY OF Los Angeles)

On this 29th day of January, 1982, before me, the undersigned, a Notary Public, in and for said State, personally appeared, Aubrey Meyerson, known to me to be the person whose name is subscribed to the within instrument as the Attorney-in-Fact of Herbert M. Gelfand, and acknowledged to me that he subscribed the name of Herbert M. Gelfand, thereto as General Partner of De Anza Mobile Estates, a California Limited Partnership for and on behalf of a said limited partnership and his own name as Attorney-in-Fact.

WITNESS my hand and official seal.

OFFICIAL SEAL
DOROTHY ANN BOYCE
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY
My comm. expires JUN 25, 1984

Dorothy Ann Boyce

Notary Public in and for said
County and State

(R-82-1235 Rev.)

RESOLUTION NUMBER R- 255717

Adopted on JAN 26 1982

BE IT RESOLVED, by the Council of The City of San Diego, as follows:

That the City Manager is hereby authorized and empowered to execute a Tenth Amendment to Lease Agreement between the City and DE ANZA MOBILE ESTATES, which Tenth Amendment provides for rent increases to the City from the operations of the mobilehome park located on De Anza Point and which Amendment contains additional provisions, as more particularly described in that Tenth Amendment to Lease Agreement on file in the office of the City Clerk as Document No. RR-255717.

BE IT FURTHER RESOLVED, that this resolution shall be and become effective on January 30, 1982, prior to Resolution R-255718, if said Tenth Amendment is fully executed by said date.

BE IT FURTHER RESOLVED, that in the event said Tenth Amendment is not fully executed by January 30, 1982, this resolution shall be void and of no force or effect.

APPROVED: John W. Witt, City Attorney

By _____
Harold O. Valderhaug
Deputy City Attorney

HOV:ps:731.7
1/22/82
Revised 1/29/82
Or.Dept:Prop.
Job: 216667
Form=r.none

Passed and adopted by the Council of The City of San Diego on January 25, 1982 by the following votes:

YEAS: Mitchell, Golding, Williams, Struiksma, Gotch, Murphy, Killea.

NAYS: Cleator, Wilson.

NOT PRESENT: None.

AUTHENTICATED BY:

PETE WILSON
Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By BARBARA BERRIDGE
Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION NO. R- 255747 passed and adopted by the Council of The City of San Diego, California, on 1-25-82.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL) By Barbara Berridge
Deputy

(Rev. 5/79)
bb

not apply in the case of any street or highway which is opened through a field in which drilling has commenced prior to the opening of the street or highway.

CHAPTER 142

An act granting certain lands, tidelands and submerged lands of the State of California to the City of San Diego upon certain trusts and conditions.

[Approved by Governor April 27, 1915. Filed with Secretary of State April 28, 1915.] In effect September 25, 1915

The people of the State of California do enact as follows:

SECTION 1. There is hereby granted to the City of San Diego, a municipal corporation of the State of California, and to its successors, all of the right, title and interest of the State of California, held by said State by virtue of its sovereignty, in and to all tidelands and submerged lands whether filled or unfilled in or adjacent to Mission Bay or its entrance, and also all the right, title and interest of the State of California in the following described parcels of land previously granted to the State of California by the Mission Beach Company on January 15, 1936, and recorded in Book 580, Page 10, on file in the office of the County Recorder of San Diego County, California: City of San Diego; Grant of tidelands, etc.

Parcel A: A parcel of land lying along the shore line on the east line of Mission Beach; beginning at the intersection of the northerly boundary line of San Fernando Place produced easterly and the easterly boundary line of Bayside Walk, as shown on the official map of Mission Beach and filed in the county recorder's office as Map 1809; thence in a southerly direction along the easterly side of Bayside Walk to the northerly line of San Diego Place; thence northeasterly along the northerly line of San Diego Place produced to the intersection of the mean high tideline as shown on the official map approved by the State Board of Harbor Commissioners for the Bay of San Diego, March 4, 1926, and filed in the county recorder's office as Misc. Map 72; thence in a northerly direction along the mean high tide line to a point at the intersection of the mean high tide line with the northerly line of San Fernando Place produced easterly; thence southwesterly along the said northerly line of San Fernando Place produced to the point of beginning.

Parcel B: A parcel of land lying along the shore line on the east side of Mission Beach; beginning at the intersection of the southerly boundary line of Ventura Place produced easterly and the easterly line of Bayside Walk, as shown on the official map of Mission Beach, filed in the county recorder's office as Map 1809; thence in a northerly direction along the easterly boundary line of Bayside Walk to the center line of Verona Court produced easterly; thence in a northeasterly direction along the center line of Verona Court produced easterly to the

intersection of the mean high tide line, as shown on the official map approved by the State Board of Harbor Commissioners for the Bay of San Diego, March 4, 1926, and filed in the county recorder's office as Misc. Map 72; thence in a southerly direction along the said mean high tide line to the intersection of the mean high tide line with the southerly boundary line of Ventura Place produced easterly; thence in a southwesterly direction along the southerly boundary line of Ventura Place produced to the point of beginning.

Conditions of trust

To be forever held by said city, and by its successors, in trust for the uses and purposes and upon the express conditions following, to wit:

(a) That said lands shall be used by said city and by its successors solely for the purpose of establishing, improving and conducting a harbor for small boats and for the construction, maintenance and operation thereon of wharves, structures and appliances necessary or convenient for the protection or accommodation of commerce, navigation and fisheries and for the establishment and maintenance of parks, playgrounds, bathhouses, recreation piers and facilities necessary or convenient for the inhabitants of said city; for educational, commercial, and recreational purposes, including the necessary streets, highways and other facilities convenient thereto; and said city or its successors shall not at any time grant, convey, give or alien said lands or any part thereof to any individual, firm or corporation for any purpose whatsoever; provided, that said city or its successors may grant franchises thereon for limited periods, but in no event exceeding 50 years, for wharves and other public uses and purposes and may lease said lands or any part thereof for limited periods, but in no event exceeding 50 years, for purposes consistent with the trust upon which said lands are held by the State of California and with the requirements of commerce, navigation or fisheries.

(b) That said harbors and tidelands shall be improved by said city without expense to the State and shall always remain public harbors and public tidelands for all purposes of commerce, navigation and fisheries; and the State of California shall have at all times the right to use without charge all wharves, docks, piers and other improvements constructed on said lands or any part thereof for any vessel or other water craft or railroad owned or operated by the State of California.

(c) That in the management, conduct or operation of said harbors and tidelands or of any of the utilities, structures or appliances mentioned in paragraphs preceding, no discrimination in rates, tolls or charges or in facilities for any use or service in connection therewith shall ever be made, authorized or permitted by said city or its successors.

(d) There is also reserved to the people of the State of California the absolute right to fish in the waters of Mission Bay with the right of convenient access to such waters under the real property hereby granted for the purpose of fishing. There is also reserved to the State of California all the deposits of min-

eral, including oil and gas in the real property hereby granted, and there is reserved to the State of California or persons authorized by the State of California the right to prospect, mine and remove such deposit from the real property granted and to occupy and use so much of the surface as may be required therefor.

(c) The lands herein described are granted subject to the express reservation and condition that the State may at any time in the future use said lands or any portion thereof for highway right-of-way purposes without compensation to the city, its successors or assigns, or any person, firm or public or private corporation claiming under it, except that in the event improvements have been placed upon the property taken by the State for said purposes, compensation shall be made to the person entitled thereto for the value of his interest in the improvements taken or the damages to such interest.

CHAPTER 143

An act to repeal Chapter 1127 of the Statutes of 1943; to repeal Section 13842.1 of the Education Code and to amend Section 13842 of said code, all relating to the salaries of persons employed by school districts in positions requiring certification qualifications.

[Approved by Governor April 27, 1945. Filed with Secretary of State April 28, 1945.] In effect September 15, 1945

The people of the State of California do enact as follows:

SECTION 1. Chapter 1127 of the Statutes of 1943 is repealed. Repeal

SEC. 2. Section 13842.1 of the Education Code is repealed. Same

SEC. 3. Section 13842 of the Education Code is amended to read:

13842. The governing board of each school district shall pay to each person employed in a day school of the district for full time in a position requiring certification qualifications an annual salary of not less than one thousand eight hundred dollars ($1,800). Minimum teachers' salaries

The governing board of each school district shall pay to each person employed for less than full time in a position requiring certification qualifications an annual salary of not less than an amount which bears the same ratio to one thousand eight hundred dollars ($1,800) as the time required of the person bears to the time required of a person employed full time.

"Full time" means not less than the minimum school day each day the schools of the district are maintained during the school year. "Full time"

If any elementary school district receives as income during any school year from all available sources less than two thousand seventy-five dollars ($2,075), the county superintendent of schools having jurisdiction over the district may apportion Additional apportionment to elementary school district

SEC. 4. Section 1300.28 of said code is amended to read:

1300.28. The suspension, amendment or termination of any marketing order or marketing agreement shall not suspend or terminate any cause of action which has accrued thereunder, but the same shall survive and exist the same as if such marketing order or agreement had not been suspended, amended or terminated. Effect of suspension, etc.

CHAPTER 1454

An act to amend Section 9602 of the Education Code, relating to the education of physically handicapped minors.

[Approved by Governor June 29, 1955. Filed with Secretary of State June 30, 1955.] In effect September 7, 1955

The people of the State of California do enact as follows:

SECTION 1. Section 9602 of the Education Code is amended to read:

9602. Any minor who, by reason of a physical impairment, cannot receive the full benefit of ordinary education facilities, shall be considered a physically handicapped individual for the purposes of this chapter. Minors with speech disorders or defects shall be considered as being physically handicapped. Minors with physical illnesses or physical conditions which make school attendance impossible or inadvisable shall be considered as being physically handicapped.

CHAPTER 1455

An act to amend Section 1 of Chapter 142 of the Statutes of 1945, relating to tidelands and submerged lands in the County of San Diego.

[Approved by Governor June 29, 1955. Filed with Secretary of State June 30, 1955.] In effect September 7, 1955

The people of the State of California do enact as follows:

SECTION 1. Section 1 of Chapter 142 of the Statutes of 1945 is amended to read:

Section 1. There is hereby granted to the City of San Diego, a municipal corporation of the State of California, and to its successors, all of the right, title and interest of the State of California, held by said State by virtue of its sovereignty, in and to all tidelands and submerged lands whether filled or unfilled in or adjacent to Mission Bay or its entrance, and also all the right, title and interest of the State of California in the following described parcels of land previously granted to the State of California by the Mission Beach Company on January City of San Diego; grant of tidelands, etc.

15, 1936, and recorded in Book 580, page 10, on file in the Office of the County Recorder of San Diego County, California:

Parcel A: A parcel of land lying along the shore line on the east line of Mission Beach; beginning at the intersection of the northerly boundary line of San Fernando Place produced easterly and the easterly boundary line of Bayside Walk, as shown on the official map of Mission Beach and filed in the county recorder's office as Map 1809; thence in a southerly direction along the easterly side of Bayside Walk to the northerly line of San Diego Place; thence northeasterly along the northerly line of San Diego Place produced to the intersection of the mean high tide line as shown on the official map approved by the State Board of Harbor Commissioners for the Bay of San Diego, March 4, 1926, and filed in the county recorder's office as Misc. Map 72; thence in a northerly direction along the mean high tide line to a point at the intersection of the mean high tide line with the northerly line of San Fernando Place produced easterly; thence southwesterly along the said northerly line of San Fernando Place produced to the point of beginning.

Parcel B: A parcel of land lying along the shore line on the east side of Mission Beach; beginning at the intersection of the southerly boundary line of Ventura Place produced easterly and the easterly line of Bayside Walk, as shown on the official map of Mission Beach, filed in the county recorder's office as Map 1809; thence in a northerly direction along the easterly boundary line of Bayside Walk to the center line of Verona Court produced easterly; thence in a northeasterly direction along the center line of Verona Court produced easterly to the intersection of the mean high tide line, as shown on the official map approved by the State Board of Harbor Commissioners for the Bay of San Diego, March 4, 1926, and filed in the county recorder's office as Misc. Map 72; thence in a southerly direction along the said mean high tide line to the intersection of the mean high tide line with the southerly boundary line of Ventura Place produced easterly; thence in a southwesterly direction along the southerly boundary line of Ventura Place produced to the point of beginning.

Conditions of trust.

To be forever held by said city, and by its successors, in trust for the uses and purposes and upon the express conditions following, to wit:

Harbors, wharves, etc.

(a) That said lands shall be used by said city and by its successors solely for the purpose of establishing, improving and conducting a harbor for small boats and for the construction, maintenance and operation thereon of wharves, structures and appliances necessary or convenient for the protection or accommodation of commerce, navigation and fisheries and for the establishment and maintenance of parks, playgrounds, bathhouses, recreation piers and facilities necessary or convenient for the inhabitants of said city; for educational, com-

mercial, and recreational purposes, including the necessary streets, highways and other facilities convenient thereto; and said city or its successors shall not at any time grant, convey, give or alien said lands or any part thereof to any individual, firm or corporation for any purpose whatsoever; provided, that said city or its successors may grant franchises thereon for limited periods, but in no event exceeding 50 years, for wharves and other public uses and purposes and may lease said lands or any part thereof for limited periods, but in no event exceeding 50 years, for purposes consistent with the trust upon which said lands are held by the State of California and with the requirements of commerce, navigation or fisheries.

Improvements, etc.

(b) That said harbors and tidelands shall be improved by said city and shall always remain public harbors and public tidelands for all purposes of commerce, navigation and fisheries; and the State of California shall have at all times the right to use without charge all wharves, docks, piers and other improvements constructed on said lands or any part thereof for any vessel or other watercraft or railroad owned or operated by the State of California.

Management, etc.

(c) That in the management, conduct or operation of said harbors and tidelands or of any of the utilities, structures or appliances mentioned in paragraphs preceding, no discrimination in rates, tolls or charges or in facilities for any use or service in connection therewith shall ever be made, authorized or permitted by said city or its successors.

Reservations

(d) There is also reserved to the people of the State of California the absolute right to fish in the waters of Mission Bay with the right of convenient access to such waters under the real property hereby granted for the purpose of fishing. There is also reserved to the State of California all the deposits of mineral, including oil and gas, in the real property hereby granted, and there is reserved to the State of California or persons authorized by the State of California the right to prospect, mine and remove such deposit from the real property granted and to occupy and use so much of the surface as may be required therefor.

(e) The lands herein described are granted subject to the express reservation and condition that the State may at any time in the future use said lands or any portion thereof for highway right-of-way purposes without compensation to the city, its successors or assigns, or any person, firm or public or private corporation claiming under it, except that in the event improvements have been placed upon the property taken by the State for said purposes, compensation shall be made to the person entitled thereto for the value of his interest in the improvements taken or the damages to such interest.

CHAPTER 1008

(Assembly Bill No. 447)

An act relating to lands granted to the City of San Diego.

[Became law without Governor's signature. Filed with Secretary of State September 30, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 447, Kapiloff. Land grants: City of San Diego.

Under existing law, certain lands have been granted to the City of San Dieg subject to prescribed terms and restrictions.

This bill would authorize the City of San Diego, not later than February 1, 198 to concur by resolution in specified findings and determinations regarding t residential use by mobilehome tenants of specified parcels situated in Mission Ba commonly known as De Anza Point, granted by the state to the City of San Dieg which lands are subject to a 50-year lease agreement entered into by the city f development of the lands as a tourist and trailer park. The concurred-in findin and determinations would be subject to specified conditions requiring public acc to be permitted and specifying that on and after November 23, 2003, the lands sh be developed for park and recreation purposes consistent with the Master Plan f Mission Bay Park in effect on August 11, 1981.

The bill would be inoperative if, by February 1, 1982, the city fails to concur the findings and determinations.

The people of the State of California do enact as follows:

SECTION 1. Notwithstanding any provision of Chapter 142 of the Statutes 1945, as amended by Chapter 1455 of the Statutes of 1955, or any provision Chapter 2139 of the Statutes of 1963, the City of San Diego, not later t February 1, 1982, may, with respect to those lands granted in trust to the commonly known as De Anza Point and more particularly described in Section this act, and subject to the provisions of Section 3 of this act, concur by resolu in the following findings and determinations:

(a) The City of San Diego, as trustee for the people of California, has ent into a 50-year lease agreement for development of the described lands as a to and trailer park, which term will end on November 23, 2003.

(b) The described lands were intended by the Legislature to be used for pu recreation and public recreational support facilities, which uses could encom transient-type guest housing. However, the described lands have in fact developed with permanent sites for mobilehomes which can no longer be consid public guest housing facilities.

(c) Private residential use of these lands is in conflict with the Legislature's i as declared in the legislative grants.

(d) Many members of the public have made De Anza Point their residenc many years and have come to look upon the lands described in Section 2 of th as their home despite their month-to-month contractual tenancy.

(e) In balancing the hardship of relocating tenants with current public nee

expanded recreational ds on Mission Bay, sufficient lands are available or can be made available for recreational purposes on Mission Bay until the year 2003.

(f) In view of the foregoing, tenants should not be forced, by reason of their residential use of the described lands, to relocate outside those lands before November 23, 2003. Thus, it is the policy of the state to permit existing uses of the described lands to continue until November 23, 2003. This policy is not intended to affect the rights and obligations of landlord and tenant under the terms of existing leases.

SEC. 2. Upon compliance by the City of San Diego with the provisions of this act, the use of the lands described in this section in accordance with this act shall be deemed to be in furtherance of trust purposes and consistent with the provisions of Chapter 142 of the Statutes of 1945, as amended by Chapter 1455 of the Statutes of 1955, and the provisions of Chapter 2139 of the Statutes of 1963. The provisions of this act shall be applicable to the following described lands:

(a) That portion of the lands granted by the State of California to the City of San Diego pursuant to Chapter 2139 of the Statutes of 1963, and designated therein as parcel 3, being that portion of Pueblo Lot 1798 of the Pueblo Lands of San Diego according to a map thereof made by James Pascoe in 1870, a copy of which map was filed in the Office of the Recorder of San Diego County, November 14, 1921, and known as Miscellaneous Map No. 36, and more particularly described as follows:

Beginning at a point which is shown as Station No. 1 on the U.S. Coast and Geodetic Survey of the Mean High Water Line of Mission Bay on Miscellaneous Map No. 69 filed in the Office of the Recorder of San Diego County on March 8, 1926, that point of beginning being South 14° 35' East a distance of 446.92 feet from the Northeasterly corner of Pueblo Lot 1798; thence South 72° 40' West a distance of 587.40 feet to a point shown as Station "E" on Miscellaneous Map No. 69; thence South 78° 21' West a distance of 574.48 feet, more or less, to a point on the Mean High Tide Line of Mission Bay; thence Northerly along the Mean High Tide Line a distance of 390.79 feet, more or less; thence North 75° 37' 15" East a distance of 590.11 feet to a point tangent to a curve; thence Easterly along the arc of a curve concave to the right with a radius of 1,500 feet through an angle of 15° 14' 33" a distance of 399.05 feet; thence South 89 ° 08' 12" East a distance of 151.54 feet to a point on a straight line between the Northeasterly corner of Pueblo Lot 1798 and the point of beginning; thence South 14° 35' East a distance of 294.32 feet to the point of beginning, containing 10.20 acres, more or less.

(b) Also, that portion of the lands granted by the State of California to the City of San Diego pursuant to Chapter 2139 of the Statutes of 1963, and designated therein as parcel 1, being that portion of Pueblo Lot 1208 of the Pueblo Lands of San Diego according to a map thereof made by James Pascoe in 1870, a copy of which Map was filed in the Office of the Recorder of San Diego County, November 14, 1921, and known as Miscellaneous Map No. 36, more particularly described as follows:

Beginning at a point which is shown as Station No. 1 on the U.S. Coast and Geodetic Survey of the Mean High Water Line of Mission Bay on Miscellaneous Map No. 69 filed in the Office of the County Recorder on March 8, 1926, that point of beginning bears South 14° 35' East a distance of 446.92 feet from the Northeasterly corner of Pueblo Lot 1798; thence North 72° 26' East a distance of 209.53 feet; thence due North 118.97 feet to the tangent point of a curve; thence along a curve concave to the left with a radius of 100 feet through an angle of 89° 8' 12" a distance of 155.57 feet; thence North 89° 08' 12" West a distance of 175.92 feet to a point on a straight line between the Northeasterly corner of Pueblo Lot 1798 and

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(c) Also, that portion of the lands granted by the State of California to the City of San Diego pursuant to Chapter 142 of the Statutes of 1945, and more particularly described as follows:

Beginning at a point 446.92 feet South 14° 35' East from the Northwesterly corner of Pueblo Lot 1798, that point being shown on Miscellaneous Map No. 69 filed in the Office of the County Recorder on March 8, 1926, as Station No. 1 on the U.S. Coast and Geodetic Survey of the Mean High Water Line of Mission Bay; thence South 78° 40' West a distance of 587.40 feet; thence South 78° 21' West a distance of 574.48 feet, more or less, to a point on the Mean High Tide Line of Mission Bay; thence Southerly along the Mean High Tide Line a distance of 1041.08 feet, more or less; thence North 79° 48' 30" East a distance of 830 feet, more or less; thence North 52° 27' East a distance of 265.83 feet, more or less, to a point on the Mean High Tide Line of Mission Bay; thence continuing North 52° 27' East a distance of 370.0 feet, more or less, to a point in the waters of Mission Bay; thence North 29° 27' 54" West a distance of 370.0 feet, more or less, to a point on the Mean High Tide Line of Mission Bay; thence due North a distance of 522.40 feet, more or less, to the Southeasterly corner of the parcel referenced immediately above; thence South 72° 26' West a distance of 209.57 feet to the point of beginning, containing 28.3 acres of land, more or less, and 2.69 acres of water area, more or less.

(d) Also, that portion of the lands granted by the State of California to the City of San Diego pursuant to Chapter 142 of the Statutes of 1945, and more particularly described as follows:

Beginning at the Southwesterly corner of the parcel referenced immediately above, which is a point on the Mean High Tide Line of Mission Bay that point bearing South 25° 18' 31" West a distance of 1934.00, more or less, from the Northeasterly corner of Pueblo Lot 1798; thence South 10° 11' 30" East along the Mean High Tide Line a distance of 20 feet; thence continuing along the Mean High Tide Line Southerly and Easterly along a curve concave to the left a distance of 1381.94 feet, more or less; thence North 74° 40' 02" East along the Mean High Tide Line a distance of 1283.0 feet, more or less; thence Easterly, Northerly and Westerly along the Mean High Tide Line along a curve to the left a distance of 894.10 feet, more or less; thence North 4° 47' 16" West a distance of 100.0 feet to a point in the waters of Mission Bay; thence South 83° 40' 09" West a distance of 827.61 feet to a point in the waters of Mission Bay; thence North 4° 47' 16" West a distance of 270 feet to a point in the waters of Mission Bay, that point being the Southeasterly corner of the parcel referenced immediately above; thence South 52° 27' West a distance of 370 feet, more or less, to a point on the Mean High Tide Line of Mission Bay; thence continuing South 52° 27' West a distance of 265.83 feet, more or less; thence South 79° 48' 30" West a distance of 830.0 feet to the point of beginning, containing 30.08 acres of land area, more or less, and 3.46 acres of water area, more or less.

SEC. 3. The findings and determinations concurred in by the City of San Diego pursuant to Section 1 of this act shall be subject to compliance with the following conditions:

(a) Until November 23, 2003, public access to the lands described in Section 2 of this act shall be permitted to the maximum extent possible.

(b) On and after November 23, 2003, the lands described in Section 2 of this act shall be developed for park and recreation purposes consistent with the Master Plan for Mission Bay Park as in effect on August 11, 1981, and shall be maintained and operated or caused to be maintained and operated for these purposes by the City

San Diego under the provisions of Chapter 142 of the Statutes of 1945, as amended by Chapter 1455 of the Statutes of 1955, and the provisions of Chapter 2139 of the Statutes of 1963, and the City of San Diego may administer the lands in any manner consistent with the provisions of those statutes.

(c) The City of San Diego shall submit an annual report and audit to the State Lands Commission on the management of the lands described in Section 2 of this act and the progress in increasing public use of the area while respecting tenants' rights to remain.

(d) The City of San Diego and its lessee shall notify all tenants and residents of the mobilehome park of the existence of this act and the provisions contained herein.

(e) The City of San Diego shall, in any renegotiation of the existing lease with its lessee, insure that fair rental value be obtained by the city as trustee of these lands and shall not execute any lease amendment prior to formal written approval by the State Lands Commission.

(f) The provisions of Section 6359 of the Public Resources Code shall not apply to this act.

SEC 4. If by February 1, 1982, the City of San Diego fails to concur in the findings and determinations set forth in Section 1 of this act, the provisions of this act shall be inoperative.

NOTICE TO TENANTS

AT

DE ANZA HARBOR RESORT

NOTICE IS HEREBY GIVEN, pursuant to the terms of Assembly Bill 447 of the California Legislature 1981-82 regular session and the TENTH AMENDMENT TO LEASE AGREEMENT between the City of San Diego and De Anza Mobile Estates dated January 29, 1982 as follows:

1. Assembly Bill 447 directly affects the property covered by the aforesaid lease. A copy of Assembly Bill 447 is attached hereto as Exhibit 1.

2. The aforesaid lease requires tha LESSEE, De Anza Mobile Estates shall provide to all present and future occupants of mobile home spaces on the premises leased, notice that such occupants shall not be entitled to and may not claim:

a. Any relocation allowances, benefits, monetary payments or any other rights of any kind or amount at any time whatsoever by reason of, or arising out of, the provisions of the said Assembly Bill 447 or by virtue of any action or inaction of LESSEE or LESSOR pursuant to said Bill; or

b. Any extension by LESSOR or LESSEE of the term of their individual subleases pursuant to any provision of the basic lease or by reason of, arising out of the provisions of Assembly Bill 447.

3. The City of San Diego, under terms of the TENTH AMENDMENT TO LEASE AGREEMENT, has agreed that it will consider a Redevelopment Plan involving that portion of De Anza Mobile Estates which is not being utilized for mobile home space rental. The Plan shall not require displacement of mobilehomes, but may potentially require relocation of mobilehomes within the lease area. The City may, at its sole discretion accept, reject or modify the Redevelopment Plan.

4. The date of expiration of the basic lease is November 23, 2003, unless sooner terminated in accordance with the terms thereof and under no circumstances shall any occupant's term be extended beyond November 23, 2003 or said earlier termination date.

5. Neither Assembly Bill 447 nor the TENTH AMENDMENT TO LEASE AGREEMENT lengthens, shortens, or otherwise modifies the individual subleases or agreements between LESSEE and occupants of mobile home spaces, or precludes the City of San Diego from considering amendments to the lease agreement prior to November 23, 2003.

State of California)
) ss.
County of San Diego)

On _____,
before me, the undersigned,
a Notary Public in and for
said State, personally
appeared _____

_____,
Known to me to be the person
who executed the within in-
strument and acknowledged to
me that _____ executed same.

_____
Notary Public

RECEIPT OF THE ABOVE NOTICE IS
HEREBY ACKNOWLEDGED:

_____

_____

Space: _____

DE ANZA MOBILE ESTATES

By: THEODIS GIBBS
For the Operating General Partners

Title: General Manager

Attest: _____

DE ANZA HARBOR RESORT

LONG-TERM RENTAL AGREEMENT

THIS RENTAL AGREEMENT ("Agreement") between ASSOCIATED MOBILE ESTATES, doing business as DE ANZA HARBOR RESORT ("DE ANZA") and HOMEOWNER (as defined in the DEFINITION section below) shall be effective on the Effective Date (as defined in the DEFINITION section below) and shall remain in effect until November 23, 2003 unless terminated earlier as provided in this Agreement or by operation of law. This Agreement describes the unique relationship between DE ANZA, which owns a leasehold estate in the real property (wherein the Space that is the subject of this Agreement is situated) and fee title to the common area improvements at DE ANZA HARBOR RESORT (the "Community"), located on tidelands which have been dedicated by City ordinance to public park use and are held in trust by the City of San Diego (the "City") and the HOMEOWNER who owns a mobilehome located in the Community. This Agreement allows the HOMEOWNER to use the Space (as defined below in Article 1) for the placement of his mobilehome and allows HOMEOWNER the use of common area facilities at the Community, both subject to established rules and regulations. This Agreement shall be exempt from any ordinance, rule, regulation, or initiative measure adopted by any local governmental entity which establishes a maximum amount that a landlord may charge a tenant for rent. The terms of this Agreement shall prevail over conflicting provisions of such an ordinance, rule, regulation or initiative measure limiting or restricting rents in mobilehome parks only during the term of this Agreement. If this Agreement is not in effect and no new Agreement in excess of twelve (12) months' duration is entered into, then the last rental rate charged for the Space under the previous agreement shall be the base rent for purposes of applicable provisions of law concerning rent regulations, if any.

This Agreement meets the criteria of Civil Code section 798.17 in that:

1. This Agreement is in excess of twelve (12) months' duration.

ATTACHMENT 2

2. This Agreement is entered into between the management and a HOMEOWNER for the personal and actual residence of the HOMEOWNER.

3. The HOMEOWNER has thirty (30) days from the date this Agreement is offered to accept the Agreement by signing it.

4. The HOMEOWNER who signs this Agreement may void it by notifying DE ANZA in writing within seventy-two (72) hours of signing it.

5. - The HOMEOWNER may reject this Agreement and instead accept a rental agreement for a term of twelve (12) months or less from the Effective Date of this Agreement. If the HOMEOWNER wants a rental agreement for a term of twelve (12) months or less, including a month-to-month agreement, that agreement shall contain the same "rental charges", terms and conditions as this Agreement during the first twelve (12) months.

DEFINITIONS

1. HOMEOWNER(S): _____.

(Insert Names of HOMEOWNER(S)).

2. Phase 1 HOMEOWNER, Yes or No: _____.

3. Effective Date: October 1, 1988.

4. Space (as defined in paragraph 21.3 below): _____.

(Insert space number).

5. MASTER LEASE: The lease and amendments originally dated May 18, 1951 between the City of San Diego as lessor and M.F. Purdy and Lila Witcher as lessee, filed May 21, 1951 as Document No. 433606 in the Office of the City Clerk, San Diego, California.

6. Monthly Rental Payment: $ _____ per month, as of the Effective Date, or $ _____ per month, as of the date this Agreement is signed.

7. ANNIVERSARY DATE: _____.

RECITALS

1. DE ANZA intends to request the City to allow it to develop a resort hotel complex ("Resort"). DE ANZA would not enter into this Agreement but for HOMEOWNER agreeing to its provisions and agreeing to the development of the Resort. DE ANZA would suffer severe financial losses if the HOMEOWNER fails to abide by this Agreement and cooperate with, and support DE ANZA in, its efforts to gain the City's approval of development and construction of the Resort.

2. DE ANZA now leases the premises upon which the Community is located, under the terms of a MASTER LEASE. A copy of that lease as amended is available for inspection in DE ANZA'S office at the Community at all reasonable times.

3. This Agreement contains provisions which the parties agree constitute reasonable relocation costs arising from the Community's full or partial closure . If such full or partial closure is a "Change of Use" under section 798.10 of the Civil Code, DE ANZA will file with the City, pursuant to section 65863.7 of the Government Code, a report on the impact of the conversion upon the homeowners. The City will be asked to find that this Agreement's provisions adequately mitigate any adverse impact of the conversion on the ability of a displaced homeowner to find adequate housing in a mobilehome park. Certain benefits of this Agreement will be provided by DE ANZA only if the City makes such a finding and approves its development plans.

4. DE ANZA intends to enter into an agreement(s) with the City, which shall allow DE ANZA to develop a hotel resort and related facilities ("Resort") in phases, which will require relocation of mobilehomes and HOMEOWNERS from one location to another within the boundaries of the Community.

5. HOMEOWNER now has a month-to-month tenancy or a one-year lease as a subtenant of DE ANZA. HOMEOWNER'S tenancy will terminate no later than November 23, 2003. HOMEOWNER hereby is given notice that DE ANZA intends to close the park on November 23, 2003. Subject to this Agreement, DE ANZA is giving up its right to close the park after giving one year's notice, and is instead giving in excess of fifteen (15) year's notice.

6. This Agreement provides circumstances under which DE ANZA may assist HOMEOWNER in his efforts to realize the value of his mobilehome and may assist HOMEOWNER with his relocation costs upon closure of the Community.

7. HOMEOWNER acknowledges that this Agreement is contingent upon execution by at least 340 of the 510 homeowners in the Community of rental agreements containing terms and provisions as specified in this Agreement.

8. HOMEOWNER acknowledges that the current use of the Community by DE ANZA and HOMEOWNER is inconsistent with the purposes of the trust for the lands upon which the Community is located as stated in the statutes of California 1945, Chapter 142. The California Legislature, however, passed Assembly Bill No. 447, Chapter 1008 in 1981 (also known as the "Kapiloff Bill") to allow DE ANZA to continue the present use of the land until November 23, 2003.

9. The land on which the Community is located has been dedicated by the City to park use and, under Section 55 of the City Charter DE ANZA'S existing MASTER LEASE could not be extended for use as a mobilehome park without the approval of two thirds of the electorate.

THEREFORE, in consideration of the foregoing and the covenants and agreements set forth herein, HOMEOWNER and DE ANZA agree as follows:

Incorporation of Facts, Matters and Recitals

The parties to this Agreement acknowledge and agree that all the facts, matters and recitals set forth above are incorporated into and shall be part of the terms and conditions of this Agreement.

ARTICLE 1

Provisions of Rental Agreement

1.1 Offer of a One Year Lease. Under the Mobile Home Residency Law as amended from time to time (currently Civil Code section 798.18), HOMEOWNER has been offered a rental agreement for a term of twelve (12) months or less. HOMEOWNER has, however, elected the longer term of this Agreement. This Agreement does not contain any term or condition with respect to charges for rent, utilities, or incidental reasonable service charges that would be different during the first twelve (12) months of this Agreement from the corresponding term or condition that would be offered to the HOMEOWNER on a month-to-month or one year basis.

1.2 Term. The term of this Agreement commences on the Effective Date and terminates on November 23, 2003, unless terminated earlier pursuant to the terms of this Agreement or by operation of law.

1.3 HOMEOWNER Rights. This Agreement gives HOMEOWNER the right to exclusively occupy the Space, and to use common area facilities subject to Community Rules and Regulations.

1.4 Material Consideration As a material consideration for DE ANZA entering into this Agreement with HOMEOWNER, HOMEOWNER acknowledges and agrees that DE ANZA is hereby authorized and empowered to represent to the City and to the public at large that HOMEOWNER supports the development of the Resort by DE ANZA. Pursuant hereto, HOMEOWNER acknowledges and agrees that HOMEOWNER will authorize and direct the duly appointed representative(s) of all homeowners to take whatever actions might be deemed by DE ANZA reasonably necessary to convey such support and approval to the City of San Diego. Such actions by the representative(s) of HOMEOWNER might include, but not be limited to, appearing in front of and participating in public hearings held by the proper department(s) and/or agency(ies) of the City where the approval of the development of the Resort is discussed or is part of the hearing's agenda.

ARTICLE 2

Rent

2.1 Monthly Rental Payments. HOMEOWNER will pay DE ANZA in advance on the first day of each and every month, the Monthly Rental Payment as adjusted, without any deduction or offset. It is acknowledged and agreed by HOMEOWNER that DE ANZA may adjust the Monthly Rental Payment only once per year. The Monthly Rental Payment adjustments as set forth in this Agreement, will take place, each and every year, on the anniversary date of the last rent increase for HOMEOWNER (the "Annual Anniversary").

In the event HOMEOWNER'S commencement of tenancy in the mobilehome park begins at a time other than the first day of any given month, the first Monthly Rental Payment that HOMEOWNER will have to make to DE ANZA will be for an amount equal to the amount of the first full month of tenancy plus a pro-rata portion of the month in which HOMEOWNER commences his tenancy with DE ANZA. Said pro-rata portion of a month to be paid by HOMEOWNER shall be calculated based on a thirty (30) day month.

DE ANZA intends to begin construction of Phase I of the Resort, pursuant to the diagram of Phase I which is attached hereto as Exhibit "A" and by this reference made a part hereof. In the event DE ANZA either (i) intends to proceed with the construction of Phase I, or (ii) DE ANZA completes the construction of Phase I, DE ANZA may, effective on the Annual Anniversary, upon sixty (60) days written notice to HOMEOWNER, adjust HOMEOWNER'S Monthly Rental Payment pursuant to the terms set forth in subparagraph 2.2 hereinbelow. If DE ANZA abandons its plans for the construction of Phase I for any reason whatsoever, DE ANZA may, effective on the Annual Anniversary, upon sixty (60) days written notice to HOMEOWNER, adjust HOMEOWNER'S Monthly Rental Payment pursuant to the terms set forth in subparagraph 2.3 hereinbelow.

2.2 Rent Adjustment Contingent Upon Phase 1.

In the event that DE ANZA either intends to proceed with or has actually completed construction of Phase I of the Resort, DE ANZA will have the right to and DE ANZA will adjust the Monthly Rental Payment of HOMEOWNER in the following manner:

(a) DE ANZA will adjust the Monthly Rental Payment in accordance with the annual change in the CPI as defined in paragraph 2.9; and

(b) DE ANZA may also require HOMEOWNER to pay for the sub-metering of water in accordance with paragraph 3.2. DE ANZA, however, may not require the payment of any other fee or government pass-through.

2.3 Rent Adjustment Upon Abandonment of Phase 1.

In the event that DE ANZA abandons its plans to complete construction of Phase I of the Resort, at any time, DE ANZA will have the right to and may at it's option adjust the Monthly Rental Payment as follows on the Annual Anniversary:

(a) If the CPI has increased by less than four percent (4%), DE ANZA may increase the Monthly Rental Payment on the Annual Anniversary by four percent (4%); or

(b) If the CPI has increased from four percent (4%) to ten percent (10%), DE ANZA may increase the Monthly Rental Payment by the CPI percentage; or

(c) If the CPI has increased by greater than ten percent (10%), DE ANZA may only increase the Monthly Rental Payment by ten percent (10%);

(d) In the event that DE ANZA decides to abandon plans for construction of Phase I of the Resort, in addition to the Monthly Rental Payment as adjusted, HOMEOWNER will pay, upon sixty (60) days written notice from DE ANZA, his pro-rata portion of the total sum(s) representative of any and all government assessments and charges. Increases in the government charges , if any, will be payable by HOMEOWNER to the extent those percentages exceed the relevant increases in the CPI. HOMEOWNER will pay his pro-rata portion as herein set forth on a monthly basis, with the total amount paid within twelve(12) months. Such government assessments and charges will include, but not be limited to, property taxes and possessory interest or use taxes.

(e) HOMEOWNER will also pay, over the remaining term of this Agreement, an additional sum which shall be equal to the sum of HOMEOWNER'S pro-rata portion of any and all costs and expenses of capital improvements or alterations required by any government agency, if any. Regular maintenance required by a governmental agency will not be considered a capital improvement. Government charges will not include specific charges for the proposed Resort or any and all benefits available to HOMEOWNER pursuant to section 19.7 and 19.8 hereof. Capital improvement costs and expenses shall include, but not be limited to the costs of financing.

2.4 No Increase Upon Sale. A sale of the mobilehome on the Space shall be effective only if this Agreement is assigned to and assumed by the new homeowner pursuant to Article 16; in which case, the new homeowner shall be subject to the obligations of and shall enjoy the benefits of this Agreement. The sale or transfer of a mobilehome on the Space shall not cause an increase in the rent.

2.5 Decrease In Rent. The City Charter prohibits reducing rent except for gifts in aid or support of the poor, but if the City decreases the percentage on which DE ANZA'S rent under the MASTER LEASE is based, then DE ANZA will decrease HOMEOWNER'S Monthly Rental Payment in an amount that will be determined pursuant to the following calculation: the reduced Monthly Rental Payment that HOMEOWNER will have to pay to DE ANZA will be equal to the Monthly Rental Payment that DE ANZA was receiving from the HOMEOWNER multiplied by a fraction the numerator of which will be the "net rent percentage" that DE ANZA was receiving (the "net rent percentage" that DE ANZA was receiving is eighty percent[80%] since the city of San Diego receives twenty percent[20%]) divided by the "new net rent percentage" that DE ANZA will receive from HOMEOWNER (the "new net rent percentage" that DE ANZA will receive from HOMEOWNER will be determined by subtracting the new percentage of the rent that the city receives from one hundred percent[100%]). The above calculation is set forth in the following formula:

$$\text{MONTHLY RENTAL PAYMENT} \times \frac{\text{OLD DE ANZA NET RENT \%}}{\text{NEW DE ANZA NET RENT \%}}$$

2.6 Retroactive Rental Adjustment. If DE ANZA notifies HOMEOWNER that it does not intend to commence development of Phase 1 of the Resort and imposes one or more annual adjustments of the Monthly Rental Payment pursuant to Section 2.3 of this Article, and then later changes its position and determines to commence Phase 1, the adjusted rent collected pursuant to Section 2.3 may be greater than the collected rent would have been had the adjustment been made pursuant to Section 2.2. In that event, DE ANZA will recompute the amount of any annual adjustments to the Monthly Rental Payments made under Section 2.3 as if they had been made under Section 2.2. Any amount overpaid by HOMEOWNER shall be credited to HOMEOWNER'S account and shall be credited against the immediately ensuing Monthly Rental Payment(s) to be made by HOMEOWNER.

2.7 Financial Hardship. If HOMEOWNER is "financially in need," DE ANZA will either partially or fully waive its right to an increase in the Monthly Rental Payment pursuant to Section 2.2 or 2.3. "Financially in need" as used herein shall be determined based upon an objective set of standards which DE ANZA shall distribute after consulting with a representative group of homeowners to be selected by DE ANZA, and after approval by City Manager.

2.8 Late Charges. If any Monthly Rental Payment or other payment is not received by DE ANZA by the tenth day of the month in which it is due, the payment will be increased by twenty dollars ($20.00) or by five percent (5%) of the overdue amount, whichever is greater; the same amount will be charged for checks returned by the bank for any reason. Acceptance of such late charge by DE ANZA shall not constitute a waiver of HOMEOWNER'S default with respect to such overdue payment nor prevent DE ANZA from exercising any of the other rights and remedies granted in this Agreement or under state law. DE ANZA shall not be obligated in any event to accept a late payment.

2.9 CPI Defined. The term "CPI" refers to the United States Department of Labor Consumer Price Index, U.S. City Average - All Urban Consumers, 1967 = 100, or the successor index then in effect. As it relates to the adjustment of HOMEOWNER'S Monthly Rental Payment to take place on an annual basis, the increase or decrease in the Monthly Rental Payment of HOMEOWNER will be determined by the increase or decrease in the CPI for the first twelve (12) months of the period commencing sixteen (16) months immediately preceding the last anniversary of the Effective Date of this Agreement. All references in this Agreement to the term CPI, will be based upon the increase or decrease of the CPI as described above. In the event the CPI is no longer published, DE ANZA may, at its option, use any other index which reflects the CPI as of the Effective Date of this Agreement.

2.10 Pro-rata Defined. For purposes of this Agreement, "pro-rata portion" shall mean a sum equal to the sum determined by dividing the total costs or expenses in question (government assessments and charges and/or capital improvement costs and expenses) by the total number of mobilehome spaces in the Community.

ARTICLE 3

Rent Adjustments

3.1 Additional Rent. As of the Effective Date, as additional rent, HOMEOWNER will pay (i) gas, (ii) electricity, (iii) water and sewer(if applicable), (iv) storage charges(if applicable), (v) pro-rata governmental charges and assessments(if applicable), (vi) pro-rata government required capital improvements(if applicable), (vii) late charges(if applicable), and (viii) financial assistance provided to HOMEOWNER as described in this Agreement(if applicable). All of these charges shall be separately stated for each billing period by DE ANZA along with the opening and closing readings for the HOMEOWNER'S meters. DE ANZA shall conspicuously post the prevailing residential utilities rate schedule published by the utility. As of the Effective Date, water, sewer and trash are included in the Monthly Rental Payment. These additional rent items will not be subject to, nor will they apply to annual calculations of the increase in the Monthly Rental Payment as described in Article 2.

3.2 Sub-metered Water. If DE ANZA sub-meters water to the Community, DE ANZA will reduce the Monthly Rental Payment by a pro-rata portion of the average monthly cost of water and sewer to the Community, less an estimate for common areas, averaged over a period of five (5) years prior to such sub-metering. Thereafter, as additional rent, HOMEOWNER shall pay DE ANZA his actual cost of water and sewer use plus an administrative fee to cover costs. DE ANZA will not profit from this sub-metering. All costs of installation of HOMEOWNER'S water meter in the Space will be borne by HOMEOWNER and HOMEOWNER may elect to (i) personally pay such costs upon installation, or (ii) execute a note to borrow funds from DE ANZA to pay such costs with repayment to be fully amortized over five (5) years, with interest at 1% over DE ANZA'S Cost of Funds, "DE ANZA'S Cost of Funds" shall mean the permanent or variable loan constant of DE ANZA'S unsecured borrowing, if any, or if not, it shall be at the rate of Citibank prime interest in effect at the time plus two percent (2%). DE ANZA will make available evidence of its cost of funds, when applicable.

3.3 One-Time Retroactive Rent Adjustment. If HOMEOWNER had an increase in his Monthly Rental Payment at any time after December 31, 1987, and prior to the Effective Date, DE ANZA will, (i) make the initial Monthly Rental Payment of this Agreement equal to the amount it would have been if this Agreement were in effect as of their last Annual Anniversary(the last annual percentage increase in the rent, excluding the increase attributable to the City's increase, will be readjusted to three and nine-tenths percent (3.9%), and (ii) DE ANZA will calculate the amount paid in excess of what would have been paid under (i) above, and credit that amount to HOMEOWNER'S next Monthly Rental Payment. Increases in rent due to market increases upon resale that took place during the above-described period, will be retroactively adjusted as follows: (i) the first day of the month following the sale will become the new Annual Anniversary date, and (ii) the Monthly Rental Payment will be equal to the rent in effect prior to the sale, plus three and nine-tenths percent (3.9%).

ARTICLE 4

Maintenance of Land and Premises

All plants, shrubs and trees planted on the Space as well as all structures, including fences, embedded in the ground, blacktop or concrete, become the Community's property. HOMEOWNER, however, shall maintain them in good repair and attractive condition. DE ANZA may charge HOMEOWNER a reasonable fee to maintain the land or improvements upon which HOMEOWNER'S mobilehome is situated if HOMEOWNER fails to maintain such land or improvements in accordance with Community Rules and Regulations after written notification to HOMEOWNER and the failure of HOMEOWNER to comply within fourteen (14) days (under the Mobile Home Residency Law, as amended from time to time, currently Civil Code section 798.15). The written notice shall state the specific condition to be corrected and an estimate of the charges to be imposed by DE ANZA, if not corrected.

ARTICLE 5

Termination

DE ANZA may terminate this Agreement and HOMEOWNER'S tenancy for any reasons allowed by the Mobile Home Residency Law, as amended from time to time, currently Civil Code section 798.56.

ARTICLE 6

Condemnation

Condemnation of the Space or a substantial portion of the Community shall be grounds for the unilateral termination by DE ANZA of this Agreement and HOMEOWNER'S tenancy (under the Mobile Home Residency Law, as amended from time to time, currently Civil Code section 798.56(e)). In such event, DE ANZA shall notify HOMEOWNER in writing as required by law. No award for any partial or entire condemnation of the Community shall be apportioned, and HOMEOWNER hereby renounces any interest in any award resulting from a condemnation of all or a part of the real property, improvements and business at the Community. DE ANZA renounces any interest in any relocation award or personal property compensation, if any, made to HOMEOWNER in connection with the condemnation or forced relocation of HOMEOWNER'S mobilehome and its appurtenances by a government body, unless HOMEOWNER makes a claim against DE ANZA for a relocation award or property compensation in connection with the displacement. It is, however, specifically acknowledged and agreed by HOMEOWNER that nothing in this clause should be interpreted to imply that DE ANZA is representing or guaranteeing to HOMEOWNER that in the event of a condemnation, such as herein described, HOMEOWNER would receive a relocation award or personal property compensation, of any kind.

ARTICLE 7

Abandonment

If HOMEOWNER abandons his mobilehome, such abandonment will be a breach of this Agreement and DE ANZA shall have the rights and remedies set forth in this Agreement and in the Mobile Home Residency Law, as amended from time to time, currently Civil Code section 798.61.

ARTICLE 8

Civil Code Provisions

This Agreement is subject to the Mobilehome Residency Law, as amended from time to time (currently Civil Code section 798, et. seq.). A copy of the Mobilehome Residency Law is attached and incorporated by this reference.

ARTICLE 9

Rules and Regulations

HOMEOWNER agrees to obey all current Rules and Regulations and all future Rules and Regulations adopted by DE ANZA. HOMEOWNER ACKNOWLEDGES RECEIPT OF A COPY OF THE RULES AND REGULATIONS PRIOR TO OR CONCURRENT WITH SIGNING THIS AGREEMENT, A COPY OF WHICH IS ATTACHED AND INCORPORATED HEREIN. HOMEOWNER ALSO ACKNOWLEDGES THAT HOMEOWNER UNDERSTANDS AND AGREES TO BE BOUND BY SAID RULES AND REGULATIONS. If however, any current or future Rule or Regulation is inconsistent with this Agreement, this Agreement controls.

ARTICLE 10

Damage of Mobilehome

If HOMEOWNER'S mobilehome or improvements are destroyed or damaged by fire or other cause as to be wholly or partially unfit for occupancy or use, HOMEOWNER shall continue to be bound by each and every term of this Agreement including, but not by way of limitation, the obligation to make all payments called for in this Agreement. HOMEOWNER shall make the mobilehome or other improvement(s) fit for occupancy or use or replace them within sixty (60) days of such destruction or damage. Should HOMEOWNER fail to do so, DE ANZA shall have all of the rights set forth in the Rules and Regulations of the Community and in applicable laws. If the mobilehome or other improvement are destroyed or irreparably damaged, then HOMEOWNER shall promptly remove them at his expense. If HOMEOWNER fails to remove it, DE ANZA may, with notice, remove it to a secured storage facility and charge HOMEOWNER for the cost of removal and storage, which sum shall be due and payable immediately.

ARTICLE 11

Successors to DE ANZA

HOMEOWNER agrees that DE ANZA may assign its rights and obligations under this Agreement. Upon such assignment, HOMEOWNER will release DE ANZA from all further obligation under this Agreement. HOMEOWNER subordinates his interests under this Agreement to DE ANZA'S successors and to lenders who may be granted a security interest in the Community or DE ANZA'S interest. Accordingly, HOMEOWNER, upon the request by DE ANZA, shall promptly execute any and all documents that might be required by DE ANZA or a lender for the purpose of accomplishing the subordination of HOMEOWNER'S interest, as described herein. In the event HOMEOWNER were to refuse to, or fail to comply on a timely basis with the request by DE ANZA or a lender as herein set forth, such refusal or untimely compliance, would be a breach of this Agreement.

ARTICLE 12

Waiver

DE ANZA'S waiver of any default of the HOMEOWNER or DE ANZA'S acceptance of payment with knowledge of any default of any term, covenant or condition of this Agreement shall not be a waiver by DE ANZA of any subsequent or further breach by HOMEOWNER of any term, covenant or condition of this Agreement. DE ANZA'S failure to take any action in respect to any default shall not be a waiver by DE ANZA of such default or any other or further default(s). DE ANZA reserves the right to pursue all of its remedies at any time, as it sees fit.

ARTICLE 13

Savings Clause

Each provision of this Agreement is separate and distinct and individually enforceable. In the event any provision is declared to be unlawful or unenforceable, the enforceability of all the other provisions shall not be affected.

ARTICLE 16

Assignment - HOMEOWNER Termination

HOMEOWNER may assign his rights and interest under this Agreement, but such assignment will be effective only to a purchaser of HOMEOWNER'S mobilehome. Any assignment shall be documented on a form of assignment approved by DE ANZA. DE ANZA has the right to approve of a purchaser of HOMEOWNER'S mobilehome as specified in the Rules and Regulations (and the Mobile Home Residency Law as amended from time to time, currently Civil Code Section 798.74). Any purchaser of HOMEOWNER'S mobilehome shall be required to assume all the duties, responsibilities and obligations of HOMEOWNER pursuant to this Agreement and to execute an Agreement identical to this Agreement. Once HOMEOWNER'S purchaser has executed an agreement identical to this Agreement, HOMEOWNER shall thereafter be released of his duties, responsibilities and obligations under this Agreement. Such a transfer shall not in and of itself cause an increase in the Monthly Rental Payment.

RELOCATION BENEFITS - PHASE 1 HOMEOWNERS

ARTICLE 17

Relocation of Spaces

17.1 Agreement to Relocate. Phase 1 HOMEOWNER agrees to allow DE ANZA to: (i) relocate his mobilehome and (ii) transfer his leasehold interest in the Space, to a Replacement Space(as defined in Article 18 below).

17.2 Temporary Lodging. If temporary lodging is necessary during relocation, DE ANZA will pay the Phase 1 HOMEOWNER'S lodging costs to the extent of 1.25 times the average cost of local area "moderate hotel accommodations" as defined by the Convention and Visitors Bureau. DE ANZA also will pay every Phase 1 HOMEOWNER a daily food allowance of Thirty Dollars ($30.00) per person within HOMEOWNER'S immediate household.

17.3 Notice of Relocation. DE ANZA will provide a sixty (60) day written notice specifying the date for relocating the Phase I HOMEOWNER'S mobilehome ("Relocation Notice").

17.4 Waiver of Rent. Commencing upon the date that DE ANZA delivers to HOMEOWNER the Relocation Notice, DE ANZA will waive the Monthly Rental Payment due from HOMEOWNER pursuant to the terms hereof for the first full month of the sixty (60) day period from the date of the Relocation Notice. No additional Monthly Rental Payments will be waived.

17.5 Timetable of Relocation. Sixty (60) days before beginning Phase 1, DE ANZA will give Phase 1 HOMEOWNER a timetable for the relocation of his mobilehome and related improvements. Updates will be distributed periodically. However, in the event that the timetable is not met, DE ANZA will not incur any liability or obligation with respect to, or towards HOMEOWNER; and HOMEOWNER shall not have any claim or right of action against DE ANZA for such delays, if any.

ARTICLE 18

Relocation Space

18.1 Comparable Space. DE ANZA will move Phase 1 HOMEOWNER to a new mobilehome space (the "Relocation Space") within the Community that is to the greatest extent practicable, comparable to the Space. Various factors, such as view and size, will be taken into consideration. In no case will the Relocation Space be smaller than the Space. The Monthly Rental Payment will not increase as a result of the relocation, unless, pursuant to the terms of section 18.2 hereinbelow, HOMEOWNER elects to move his mobilehome to an alternate Relocation Space instead of the original Relocation Space. The Relocation Space will have at least two on-space parking spaces.

(a) DE ANZA will give Phase 1 HOMEOWNER a layout of the Relocation Spaces. The layout will indicate the placement of mobilehome, amenities and the proposed Monthly Rental Payment for each Relocation Space.

(b) A committee elected by Phase 1 Homeowners(the "Committee") guided by the "like-for-like" principle, shall assign a Relocation Space to HOMEOWNER. If HOMEOWNER is dissatisfied with the Relocation Space, he may request an alternative Relocation Space assignment from the committee.

(c) The Relocation Space will be located within an area (the "Relocation Area"), a diagram of which is attached hereto as Exhibit "B". DE ANZA will make best efforts to configure the Relocation Area in a format as described in Exhibit "B".

18.2 Alternative Relocation Space. If Phase 1 HOMEOWNER is dissatisfied with the final Relocation Space assigned by the Committee, HOMEOWNER may ask DE ANZA to give him the choice of another alternative Relocation Space. Best efforts will be made to accommodate HOMEOWNER by providing an alternative Relocation Space elsewhere in the Community. The Phase 1 HOMEOWNER may negotiate with DE ANZA to change the Monthly Rental Payment on the proposed alternative Relocation Space. Phase 1 HOMEOWNER is not obligated to select an alternative Relocation Space.

18.3 Relocation - Purchase Provisions. If Phase I HOMEOWNER elects not to relocate to a Relocation Space, then Phase 1 HOMEOWNER may require DE ANZA to purchase his mobilehome pursuant to and as set forth in this Article.

(a) If DE ANZA and HOMEOWNER cannot agree on the purchase price for the mobilehome, then the purchase price for the mobilehome shall be deemed to be the fair market value of the mobilehome (the "Valuation"). The Valuation will be determined by a licensed mobilehome salesperson or dealer, active in the San Diego area, and mutually agreed upon by DE ANZA and HOMEOWNER (the "Appraiser"). The Appraiser's Valuation shall be binding on HOMEOWNER and DE ANZA.

(b) In the event HOMEOWNER and DE ANZA cannot reach a mutual decision as to the selection of the Appraiser, HOMEOWNER will choose an appraiser and DE ANZA will choose an appraiser and the two appraisers will select a third appraiser. (In this event the appraiser selected by the two will be deemed to be the "Appraiser".)

(c) For the purposes of this Section 18.3, the Valuation of the mobilehome shall include the value of the improvements on and location of the Space and shall be based upon the value of the mobilehome in its current condition and not subject to adjustment due to its possible relocation. The Valuation, however, will take into account the specified date of closure of the Community which is the year 2003.

(d) Concurrent with or prior to the transfer of title of the mobilehome by HOMEOWNER to DE ANZA, pursuant to the provisions of this Article 18.3, Phase I HOMEOWNER shall discharge and obtain the removal of all secured interests, liens, encumbrances, taxes or other charges, if any, against the mobilehome at that time. HOMEOWNER agrees to execute any and all documents necessary to convey free and clear title in the purchased mobilehome to DE ANZA. If HOMEOWNER does not comply with the foregoing, DE ANZA will not have an obligation to purchase the mobilehome from HOMEOWNER and HOMEOWNER will have to elect to relocate his mobilehome to the Relocation Space.

(e) Once HOMEOWNER sells the mobilehome to DE ANZA, HOMEOWNER will have no further claim or right whatsoever against DE ANZA with respect to any aspect of this Agreement, the mobilehome or the relationship between HOMEOWNER and DE ANZA and DE ANZA will not owe any duty or obligation of any kind or nature to HOMEOWNER. Immediately upon the transfer of title of the mobilehome to DE ANZA, HOMEOWNER will vacate the mobilehome and the Space.

18.4 Relocation Costs. DE ANZA will pay the costs of moving the moveable mobilehome to the Relocation Space, including decking and landscaping and the specimen plant material (the cost of the relocation of the specimen plant material, which excludes trees, shall not exceed $1500.00) located on the Space ("Improvements"), and the costs of necessary packing and storage. DE ANZA will indemnify HOMEOWNER for damage to the mobilehome or possessions moved, if the damage is not caused by the negligence of HOMEOWNER. If DE ANZA determines that it cannot feasibly relocate or rebuild any Improvements, it will meet with HOMEOWNER in an effort to arrive at a mutually agreed upon replacement cost of the Improvements. If they cannot agree on replacement cost or, if HOMEOWNER does not want the Improvements replaced on the Relocation Space, then the Valuation by the Appraiser will determine a replacement cost of the Improvements. DE ANZA shall pay HOMEOWNER the determined replacement cost of the Improvements and HOMEOWNER shall have no further claim or rights against DE ANZA for replacement of Improvements.

18.5 Immovable Mobilehomes. If any part or all of a mobilehome subject to relocation is either "stick built" or determined by DE ANZA to be immovable, then DE ANZA is not obligated to move it and:

(a) HOMEOWNER may move the mobilehome at HOMEOWNER'S expense to the Relocation Space or replace it and DE ANZA will pay up to Two Thousand Dollars ($2,000.00) towards the actual cost of moving the new or existing mobilehome to the Relocation Space or removing the existing mobilehome from the Community. In any event, HOMEOWNER shall have no further claim or right against DE ANZA with respect thereto. Any replacement mobilehome must meet the architectural standards of the Community (Rules and Regulations), and have the approval of DE ANZA which appproval will not be unreasonably withheld, even if used mobilehomes are brought in; or

(b) DE ANZA will lease to HOMEOWNER a replacement mobilehome of equal or greater square footage, to be situated on the Replacement Space. DE ANZA shall provide HOMEOWNER with a choice of at least three different floor plans from which to select the replacement mobilehome. In this event HOMEOWNER acknowledges and agrees that HOMEOWNER will not retain the salvage value or any other value of the existing or replacement mobilehome. However, HOMEOWNER will retain his leasehold interest pursuant to the terms of this Agreement. HOMEOWNER will transfer the title to HOMEOWNER'S mobilehome to DE ANZA for the consideration of one dollar ($1.00) free and clear of all secured interests, liens, encumbrances, taxes or other charges. HOMEOWNER will pay DE ANZA one dollar ($1.00) per month to lease the replacement mobilehome. HOMEOWNER will enter into a lease agreement similar to this Agreement for the replacement mobilehome, with such lease agreement to be fully assignable; or

(c) In the event that the alternatives which are set forth in subparagraphs (a) and (b) above are not acceptable to HOMEOWNER, DE ANZA will purchase HOMEOWNER'S mobilehome for an amount equal to the amount represented by the Valuation of the mobilehome. The Valuation will be accomplished by the Appraiser and will take into account the value of the immovable mobilehome itself and exclude the value of the Space and its location in the mobilehome park.

Other than as set forth herein, HOMEOWNER will have no further claim or right against DE ANZA for replacement of the immovable mobilehome.

RELOCATION BENEFITS - ALL HOMEOWNERS

ARTICLE 19

19.1 Financial Assistance. If HOMEOWNER desires to sell his mobilehome, HOMEOWNER must exhaust all reasonable efforts and avenues of obtaining financing for the purpose of selling his mobilehome. In the event HOMEOWNER cannot sell his mobilehome to a "Financially Qualified Buyer" (as that term is defined in Section 19.2 below), caused by the Financially Qualified Buyer's inability to obtain financing, due solely to the short remaining term of this Agreement, DE ANZA will at it's option (i) have the right to attempt to obtain the necessary financing for said buyer to purchase HOMEOWNER'S mobilehome, or (ii) provide the necessary financing to said HOMEOWNER'S buyer for the purchase of HOMEOWNER'S mobilehome, on the following terms and conditions:

(a) The buyer executing a note with interest equal to one percent (1%) over DE ANZA'S Cost of Funds as defined in Article 3 above, from the date of disbursement of funds; fully amortized over the number of years remaining in this Agreement, less two years; payable, principal and interest, monthly and continuing on the first day of each and every month thereafter until all sums are repaid;

(b) Loan-to-value ratio shall not exceed sixty percent (60%) of the mobilehome, with value to be determined by the Appraiser. Said appraisal shall include the value of HOMEOWNER'S mobilehome in it's current location and also based upon the closure of the Community on November 23, 2003.

(c) The loan will be fully recourse to the buyer. Buyer will acknowledge willingness to cover deficiencies, if they arise for any reason.

(d) The loan shall be secured, at DE ANZA'S election, by a leasehold deed of trust and/or UCC-1 filing.

(e) A default on the loan will be a default under this Agreement.

19.2 Financially Qualified Buyer Defined. "Financially Qualified Buyer" means a person who meets the qualifying criteria and standard normally used by institutional lenders for mobilehomes in the County of San Diego, State of California.

19.3 Obligation to Purchase. If HOMEOWNER elects to sell his mobilehome prior to December 31, 1993, and cannot locate a satisfactory buyer, DE ANZA will purchase the mobilehome from HOMEOWNER at a price equal to the Valuation. However, prior to DE ANZA having the obligation to purchase the mobilehome from HOMEOWNER, DE ANZA will have the right to sell the mobilehome on behalf of HOMEOWNER. HOMEOWNER will cooperate in any and all reasonable sales efforts exerted by DE ANZA in the attempt to effectuate the sale of the mobilehome. DE ANZA will have at least six(6) months in which to sell the mobilehome. For purposes of this Section, the Valuation shall include the value of HOMEOWNER'S mobilehome in its current location and also based upon the projected closure of the Community in the year 2003.

19.4 Condition to DE ANZA'S Obligation to Purchase. It is specifically understood, acknowledged and agreed by HOMEOWNER that DE ANZA'S duty to purchase HOMEOWNER'S mobilehome as set forth in this Agreement are conditioned upon HOMEOWNER delivering title to the mobilehome free and clear of all security interests, liens, encumbrances, taxes or other charges, if any. In the event HOMEOWNER is unable to deliver such clear title to the mobilehome, HOMEOWNER will have to select one of the other alternatives available to HOMEOWNER as set forth in this Agreement. In addition, at DE ANZA'S option, upon purchasing HOMEOWNER'S mobilehome, any and all other agreements between DE ANZA and HOMEOWNER, regardless of when entered into, shall be deemed terminated in their entirety.

19.5 Schedule for Completion of Phase 1 Redevelopment. DE ANZA will establish a date for completion of construction of Phase 1 of the Resort and will deliver a schedule to HOMEOWNER sixty (60) days prior to commencement of Phase 1. Thereafter, DE ANZA will periodically notify HOMEOWNER of any construction delays. However, it is acknowledged and agreed by HOMEOWNER that DE ANZA shall incur no liability or obligation to HOMEOWNER for any injuries, damages, costs or expenses that HOMEOWNER may incur in the event a delay occurs in the projected completion date of the construction of Phase I of the Resort.

19.6 Interruption of Utility Service. If construction of the Resort results in water, sewer, or electric outages in excess of thirty-six (36) consecutive hours, then DE ANZA will provide HOMEOWNER (if affected) with the daily lodging and food allowance provided in Article 17.2 above. However, this does not constitute a waiver of any right the HOMEOWNER may have in the event the HOMEOWNER experiences outages for a lesser period of time, nor does it constitute an implied admission of liability or responsibility by DE ANZA for any damages that HOMEOWNER may incur for such interruption of utilities service.

19.7 New Amenities. Sometime prior to commencing Phase 1 construction, and only in the event that construction of Phase 1 of the Resort is actually going to commence, DE ANZA will provide HOMEOWNER with the following additional amenities:

(a) Swimming pool comparable in size to that in Bay Club;

(b) Clubhouse comparable in size to that in the Bay Club;

(c) Car wash; and

ARTICLE 20

RELOCATION BENEFITS IN YEAR 2003 AFTER COMPLETION OF PHASE 1

If DE ANZA completes construction of Phase 1, as evidenced by the receipt of certificates of occupancy, during the term of this Agreement, or if DE ANZA intends to proceed with construction of Phase 1 on November 23, 2003, the following benefits will be offered to HOMEOWNER on November 23, 2003:

DE ANZA will make reasonable efforts to build or supply or assist HOMEOWNER in building or locating a replacement mobilehome park ("Replacement Park"). If DE ANZA builds or supplies HOMEOWNER with a replacement park, HOMEOWNER may relocate his mobilehome to the Replacement Park and HOMEOWNER shall have the benefits described in subparagraph (a) below:

(a) If HOMEOWNER relocates his mobilehome to a Replacement Park, DE ANZA will pay the cost (not to exceed $3,000 adjusted by CPI as defined in Section 2.9 hereof), to move and set up HOMEOWNER'S mobilehome in the Replacement Park; HOMEOWNER shall provide DE ANZA with adequate documentation evidencing such moving and set-up costs.

(b) If HOMEOWNER is unable to locate a replacement park for his mobilehome, HOMEOWNER shall have the following options:

(i) elect to have DE ANZA pay HOMEOWNER an amount equal to the sum of Two Thousand Dollars ($2,000.00) in cash, to be used as HOMEOWNER determines. Such payment to HOMEOWNER shall take place after HOMEOWNER has moved his mobilehome from the park. If, during the year 2003, DE ANZA intends to construct additional phases of the Resort beyond Phase 1, or if DE ANZA'S lease is extended for the area beyond Phase 1 , DE ANZA will pay HOMEOWNER an amount equal to Five Thousand Dollars ($5,000.00) instead of Two Thousand Dollars ($2,000.00). This Two Thousand Dollars ($2,000.00) or Five Thousand Dollars ($5,000.00) shall be subject to adjustment for CPI as defined in section 2.9. ; or

(ii) Elect to have DE ANZA buy HOMEOWNER'S mobilehome for the amount of the Valuation. Valuation of the mobilehome under the provisions of this section shall not include the value of the Space, if any, and will be at minimum equal to the payment amounts described in Article 20b(i) above.

(iii) Notwithstanding the foregoing, Phase 1 HOMEOWNER leasing a mobilehome from DE ANZA will receive cash assistance as described in 20(b)(i) instead of the other alternatives in this Section 20.

GENERAL PROVISIONS

ARTICLE 21

21.1 Community Manager. DE ANZA will provide the Community with a bona fide resident manager if the current manager in the Community ceases his employment in the Community.

21.2 Incorporation of Provisions of MASTER LEASE. The terms and provisions of the MASTER LEASE are incorporated herein by reference as though fully set out in this Agreement.

SPECIAL CONDITIONS PRECEDENT

This Agreement is subject to, conditioned upon and shall not be effective unless at least 340 of the 510 Homeowners in the Community execute Rental Agreements with DE ANZA, which Agreements shall be substantially the same as this Agreement. Any HOMEOWNER who does not execute a Rental Agreement may not claim any benefits pursuant to the Rental Agreement except during the first twelve months as required by the Mobile Home Residency Law as amended from time to time (currently Civil Code section 798.16).

DE ANZA'S construction of Phase 1 of the Resort is contingent upon approval to construct all Phases; therefore, in the event that DE ANZA does not gain approval from the City of San Diego to construct the Resort, including all anticipated Phases thereof, or DE ANZA does not commence construction of Phase 1 of the Resort under any circumstances, then DE ANZA will not provide benefits or compensation, as the case may be, as set forth in Articles 17, 18, 19, and 20 of this Agreement. Any of these benefits in effect prior to the termination of this Agreement will cease upon 30 days written notice by DE ANZA to HOMEOWNER of its intention not to proceed with development of the Resort.

DE ANZA AND/OR THE CITY OF SAN DIEGO WILL NOT PROVIDE HOMEOWNER, HIS ASSIGNEES, PERMITTED SUBLESSEES, GRANTEES, OR HEIRS OR ANY OTHER SUCCESSOR IN INTEREST, ANY ADDITIONAL BENEFITS WHEN THE TERM OF THIS AGREEMENT EXPIRES OTHER THAN AS PROVIDED IN ARTICLE 20. IT IS UNDERSTOOD THAT ANY BENEFITS AS PROVIDED IN ARTICLE 20 ARE RECEIVED IN FULL SATISFACTION OF ANY RELOCATION COSTS AND RELOCATION COSTS ADVANCES, AND HOMEOWNER DOES HEREBY AGREE THAT SUCH COMPENSATION BENEFITS ARE FAIR, PROPER AND EQUITABLE UNDER THE PROVISIONS OF CALIFORNIA GOVERNMENT CODE, 65863.7, AND ALL RELATED BENEFIT COMPENSATION STATUTES.

EXECUTED this ____ day of _____, 19__.

ASSOCIATED MOBILE ESTATES
dba DE ANZA HARBOR RESORT

By_____
"DE ANZA"

_____
"HOMEOWNER"

_____
"SPOUSE"

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO
JOHN W. WITT
CITY ATTORNEY

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SENIOR CHIEF DEPUTY CITY ATTORNEY

MEMORANDUM OF LAW

DATE: August 11, 1989

TO: Steve Lerner, Assistant to Mayor O'Connor

FROM: City Attorney

SUBJECT: De Anza Mobilehome Park - Relocation and Redevelopment Issues

By memorandum dated July 19, 1989, copy attached as Attachment 1, you referred to a recent news article related to the proposed hotel redevelopment in the De Anza/Campland area of Mission Bay Park.

You asked whether the statement in the news article attributed to Mr. Michael Gelfand, representing De Anza, that the City must either approve the redevelopment or face an obligation to pay relocation to the tenants, is correct. You also asked for our comments as to "any legal constraints that exist that pertain to future development on [the] site" and whether the original grant from the state contains provisions "which limit the types of uses of park land in Mission Bay Park."

RELOCATION ISSUES

In answer to the question regarding relocation, this office has, in the past, reflected on the potential liability to pay relocation costs upon expiration of the De Anza Mobilehome Park lease. We have concluded that the City would not be obligated to pay relocation costs to the tenants upon expiration of the lease. A specific case on this issue in California is Stevens v. Perry, 134 Cal.App.3d 748, 184 Cal.Rptr. 701 (2d District 1982). In that case, the court held that residents of a mobilehome park located on land leased from a municipal district were not entitled to relocation benefits pursuant to the provisions of Government Code section 7260 et seq. (which constitute the California relocation assistance law) upon the expiration of the lease.

The court's conclusion was based upon the fact that the displacement of the tenants did not occur as a result of the

acquisition of the property by a public entity for public use, which is the standard set forth in the Government Code.

The 1982 decision has not been modified, reversed or overruled. However, California Government Code section 65863.7 is an additional law which deals specifically with relocation resulting from conversion of a mobilehome park to another use. The section, effective since 1981, allows the City Council, at its option, to require the person proposing a mobilehome park conversion "to take steps to mitigate any adverse impact of the conversion on the ability of displaced mobilehome park residents to find adequate space in a mobilehome park."

Section 65863.7 is part of Chapter 4, of Division 1 of Title 7 of the Government Code, which chapter, as specified in section 65803, "shall not apply to a chartered city, except to the extent that the same may be adopted by charter or ordinance of the city."

However, 1986 legislation added a provision specific to section 65863.7 as follows:

> (h) This section is applicable to charter cities.

In 1988, an amendment to section 65863.7 was proposed and ultimately enacted.

The 1988 addition provides as follows:

> (i) This section is applicable when the closure, cessation, or change of use is the result of a decision by a local governmental entity or planning agency not to renew a conditional use permit or zoning variance under which the mobilehome park has operated, or as a result of any other zoning or planning decision, action, or inaction. In this case, the local governmental agency is the person proposing the change in use for the purposes of preparing the impact report required by this section and is required to take steps to mitigate the adverse impact of the change as may be required in subdivision (e).

The above change in the state statute, which became effective January 1, 1989, has apparently lead Mr. Gelfand to conclude that the City would now have some obligation to mitigate the adverse impacts which may result to the mobilehome park tenants if they remain on the leasehold property until 2003. It should be noted

that the City's lessee has proposed to carry the burden of any relocation costs which may result from a redevelopment of the De Anza leasehold area as proposed by Mr. Gelfand.

This office does not agree with Mr. Gelfand's conclusion that the 1988 amendment to section 65863.7 would create an obligation on the part of the City to pay relocation to the De Anza tenants in 2003. Our conclusion is based upon the fact that the mere expiration of a long term lease does not constitute "a decision by a local governmental entity . . . not to renew a conditional use permit or zoning variance under which the mobilehome park has operated" nor is it "a result of any other zoning or planning decision, action, or inaction." All of the decisions specified in the statute are discretionary, whereas, in the City's fact situation, the City Council, as discussed below, will have absolutely no authority to allow the continued mobilehome park operation after the year 2003.

In addition, since the other provisions of section 65863.7 relating to the voluntary conversion of a mobilehome park to another use by a private owner merely allow a city the option of requiring mitigation measures from such private owner, it is not logical to read the amended provision as making such mitigation mandatory with regard to a local governmental agency which presumably, in the furtherance of protection of the public health, safety and welfare of its citizens, determines not to renew a conditional use permit or other such permit for a mobilehome park.

Also, a charter city's zoning laws, as reflected by the general exemption contained in Government Code section 65803, are matters of municipal concern and as a charter city San Diego cannot be preempted by the state law in managing its own zoning and planning affairs. The mere fact that the legislature enacts a statute purporting to make a particular zoning law applicable to charter cities, does not necessarily control, in view of the state constitutional provision which cannot be modified by the legislature which guarantees to a charter city control over its own municipal affairs in all areas where such affairs are not "matters of statewide concern."

We must add one significant caveat to the above decision. Despite the fact that we have concluded that the City is not presently mandated by law to make any relocation payments to De Anza Mobilehome Park residents upon expiration of the lease in 2003, we are concerned that between now and 2003 state legislation could possibly be adopted requiring, or at least purporting to require, the City to make such relocation payments. The issue involving municipal affairs of a charter city versus "matters of statewide concern" which are subject to legislative

regulation, is far from clear, and it is possible that a court could conclude that a subsequent state law regarding relocation payments for mobilehome park tenants is a matter of statewide concern.

TYPES OF USES ALLOWED IN MISSION BAY PARK

With regard to the second issue, attached as Attachment 2 is a copy of chapter 142 of the California statutes of 1945. Chapter 142 conveyed all the tidelands in Mission Bay to the City. Approximately 85 percent of the De Anza Mobilehome Park leasehold is within the tidelands grant area and is subject to the provisions of chapter 142. [The other 15 percent was conveyed to the City by the state for park and recreation use.] You will note that the tidelands grant basically requires the City to operate and maintain the tidelands for tidelands purposes which specifically include "recreational" purposes. In 1965 the City by ordinance officially dedicated Mission Bay Park to park and recreation use pursuant to section 55 of the City's Charter. Therefore, the City may now utilize the tidelands in Mission Bay Park only for park and recreation purposes in the absence of a two-thirds vote of the electorate approving some nonpark use. Residential use of the De Anza area by permanent residents is not a valid tidelands use nor is it a legal use of dedicated public park property.

Since the De Anza lease was entered into in 1953 and, therefore, precedes the dedication of the property to park use, it has been considered by this office a "grandfathered" use for the remaining term of the original lease, i.e., until 2003. Having a "grandfathered" status under the 1965 park dedication, however, did not resolve the issue that the present use was an invalid use of the tidelands. This fact resulted in a bill sponsored by then Assemblyman Kapiloff in 1982, a copy of which is attached as Attachment 3. The "Kapiloff" bill, AB 447, specifically allows the continued mobilehome park use at De Anza Cove for the period ending November 23, 2003, and provides, in addition, that "on and after November 23, 2003, the lands shall be developed for park and recreation purposes consistent with the master plan for Mission Bay Park in effect on August 11, 1981." Therefore, at the end of the year 2003 three basic provisions shall apply to the De Anza property:

1. The property must be used for the tidelands purpose of recreation under chapter 142 of the 1945 statutes.

2. The property must be used for park and recreation purposes pursuant to the 1965 ordinance of the City Council dedicating Mission Bay Park to park and recreation use.

3. In the absence of some additional state legislative action the property must be "developed for park and recreation purposes consistent with the master plan for Mission Bay Park in effect on August 11, 1981."

A copy of the pertinent portion of the Mission Bay Park Master Plan in effect on that date is attached as Attachment 4.

You will note that the master plan calls for the De Anza area to be used for "Guest Housing" which is the designation used in the plan generally for hotel developments, until expiration of the lease. After the lease expires the master plan indicates that the De Anza area "designation should be changed to Park and Shoreline unless a viable alternative proposal has been presented to modify [the] existing development and provide greater public access to the De Anza Shoreline." Therefore, in the absence of some additional state legislation, it appears that the De Anza area may be redeveloped with a viable park commercial use, such as a hotel, if "a viable . . . proposal" for such commercial use is presented to the City before the end of the lease term. Otherwise, in the absence of additional state legislation, only general "park and shoreline" uses will be allowed after 2003.

The basic legal distinction which allows a hotel but not a mobilehome park on tidelands and dedicated park property is that hotels provide temporary accommodations to park and tidelands visitors. In a large park such as Mission Bay Park, the courts have upheld such temporary accommodations as a proper park use.

Finally, it is important to note that at the end of 2003 it will not be legally possible to continue the existing mobilehome use by merely having another authorization of such use by the state legislature. Since the property has been dedicated to park use, the nonpark use of the property under the "grandfathered" lease cannot be extended in the absence of a two-thirds vote of the electorate.

JOHN W. WITT, City Attorney

By Harold O. Valderhaug
Deputy City Attorney

HOV:ps:731.7(x043.2)
Attachments 4
ML-89-80

Office of
The City Attorney
City of San Diego

MEMORANDUM

236-6220

DATE: June 20, 1994

TO: Harold O. Valderhaug, Chief Deputy City Attorney

FROM: Tom Merrick, Legal Intern

SUBJECT: De Anza Mobile Home Park Relocation

You have asked me to research whether residents of the De Anza Mobile Home Park will be eligible for relocation assistance from the City of San Diego when the lease of the Park expires in 2003. This memorandum is the result of that research.

BACKGROUND

The history of this issue was summarized in this office's report to the Planning Commission on December 4, 1991:

> The Mission Bay tidelands were conveyed to the City in 1945 to be used and held in trust for park and tidelands purposes. Permanent, private residences are not a legal use of tidelands.
>
> In 1949, the original lessee of the De Anza Mobile Home Park approached the City with a proposal to lease the property and construct facilities to be used as a "travel trailer and tourist area." Negotiations for the lease were not completed and the lease was not executed until November 1953. The lease term is fifty years and expires in November 2003. The lease specifies that the property must be developed and used as a "tourist and trailer park area." The leasehold area is mostly on filled tidelands and is subject to the tidelands trust.
>
> Subsequent to 1953, "trailers" became less and less "mobile" and by the late 1960s and mid-1970s it became apparent that the mobile homes occupying the leasehold were in fact permanent, private residences creating a potential problem under the tidelands grant.
>
> The problem was increased in 1962 when the Council by ordinance officially dedicated the Mission Bay Park lands to park and recreation use. Private residences are not a valid use of dedicated park land.

In the late 1970s, one of the City Council members raised the issue of the legality of the mobile home park use in Mission Bay and this office wrote an opinion concluding that the mobile home park use was in fact a violation of the tidelands trust and also that no such private residential use could legally be allowed on dedicated park land.

The residents of the mobile home park at that time were obviously concerned with our conclusion and in early 1982 the City Council, after several public meetings, determined to allow the De Anza, park to continue in operation until 2003 or until a redevelopment plan, including potential relocation provisions, is approved by the Council prior to 2003.

The legality of the mobile home park use was addressed for the period ending in 2003 by state legislation . . . which legislation acknowledged the present improper use of the tidelands, [and] authorized the continued use until 2003. The legislation recognized the hardships which would have resulted to the tenants and allowed continued use based upon a finding that the property was not needed for tidelands purposes during the period ending 2003 . . . .

The bill specifies that the property must be utilized for park and recreation purposes at the end of the present lease.

This office concluded that, in light of the legislative authorization regarding the tidelands, the nonpark use of the dedicated park lands is allowable on the basis that the lease was entered into in 1953 and the property was not officially dedicated to park purposes until 1962. Our conclusion was, therefore, that the lease was "grandfathered" until its expiration date.

Much of the discussion at the Council meetings which led up to the City's approval of the continued mobile home park use involved the economic hardship to the numerous tenants in the event they were forced to relocate. It was felt that giving some limited assurance of a continued right to utilize the property until redevelopment occurs, or if no redevelopment occurs, until the expiration of the lease, would provide the tenants the opportunity to either sell their units for significant prices or continue to occupy their units knowing approximately 22 years in advance that the use would end in 2003.

Now, in 1994, with nine years remaining in the lease term, the residents are claiming they are entitled to relocation benefits from the City when the master lease expires in 2003.

Questions Presented

1. Are the residents of De Anza Mobile Home Park entitled to relocation benefits from the City of San Diego under the California relocation assistance law (Gov. Code § 7260 et seq.) when their lease expires in 2003?

2. Are the residents entitled to relocation assistance from the City under Gov. Code § 65863.7 (Conversion of mobile home park to other use)?

3. Are the residents entitled to relocation assistance from the City under Division 10 of the Municipal Code, specifically § 101.1002 (Discontinuance of a Mobile Home Park)?

4. Would it be an impermissible gift of public funds to provide relocation benefits to De Anza residents who do not qualify as low income citizens?

Short Answers

1. No. Case law clearly indicates that § 7260 relocation assistance is not available where mobile home park residents are dislocated because their lease term has ended. The De Anza residents will not be relocated without relocation assistance prior to the end of the lease term in 2003.

2. No. For the residents to be entitled to relocation assistance, § 65863.7(i) requires that the park's closing be the result of a "decision, action, or inaction" by the City. The City cannot by any decision, action, or inaction, allow the lease to continue. Its expiration is the result of the end of the lease term. There is no causal connection between a City decision, action, or inaction and the park's closing. For the residential use of dedicated tideland and park property to continue, a state waiver and a vote of the citizens of San Diego to amend the City Charter would both be necessary.

3. No. The De Anza Mobile Home Park is specifically excluded under the express terms of § 101.1001. The City has the power to exclude De Anza from § 101.1002 as a special case.

4. Yes. It is impermissible for the City to provide public funds for private purposes. Since the City is not legally obligated to provide relocation assistance to the De Anza residents, it would be a gift of public funds to provide such assistance to residents who do not qualify as low income.

Discussion

I. California Relocation Assistance Law (Gov. Code Section 7260 et seq.)

The California relocation assistance law (Gov. Code § 7260 et seq.) requires public entities to provide relocation assistance to persons displaced as a result of acquisition of real property for a public use. The law, however, is not applicable to situations where the dislocation is the result of the expiration of the lease term.

In Stephens v. Perry, 134 Cal. App. 3d 748 (1982), tenants of a mobile home park whose ground lease had expired, sued the City of Santa Maria for relocation benefits. The city acquired the property from the prior lessee, but allowed the tenants to remain for the balance of the lease term. The court held the tenants were not entitled to relocation assistance.

> Under the Guidelines, the plaintiffs are not displaced persons unless their displacement occurred as a *result* of the acquisition of the real property by a public entity for a public use or upon a written order to vacate the real property for a public use. The Act is applicable to public entities such as the District only when there are persons displaced by the acquisition. It is the causal connection between the acquisition and the displacement which brings into play the provisions of the Act and the Guidelines.

Id. at 755.

Similarly, in Baiza v. Southgate Recreation and Park Distr., 59 Cal. App. 3d 669 (1976), the city acquired property on which Baiza was a tenant. The city allowed him to continue as a tenant, but he quit paying the rent. The court held he was not entitled to relocation assistance from the city after he was evicted. His eviction was not the result of the city's acquisition of the property, but was due to his breach of the contract with the city as landlord.

Courts have mandated relocation assistance where the displacement was caused by the entity's acquisition of the property. (See, e.g., Superior Strut & Hanger Co. v. Port of Oakland, 72 Cal. App. 3d 987 (1977); Albright v. State, 101 Cal. App. 3d 14 (1979)).

> Reading Superior Strut, Albright, and Baiza together, the rule which controls is this: a tenant holding under a lease which has not expired at the time property is acquired for public use and who continues lawfully in possession of the premises after termination of the lease will qualify as a "displaced person" under section 7260, subdivision (c).
>
> . . . .
>
> When the term of a lease expires but the lessee holds over without the owner's consent, he becomes a tenant at sufferance [citation omitted]. Since the possession of the tenant at sufferance is wrongful, the owner may elect to regard the tenant as a trespasser [citation omitted].

Peter Kiewit Sons' Co. v. Richmond Redevelopment Agency, 178 Cal. App. 3d 435, 445 (1986).

The residents' representatives have often used as an example the case of El Morro Mobile Home Park in Orange County. *Purchase Of Parkland Approved*, San Diego Union, Dec. 14, 1979, at A-5. After the state purchased land on which the mobile home park was located in order to create a public park, it allowed park residents to remain an additional twenty years in lieu of relocation benefits. In that case, the state's acquisition of the land for public use forced the closure of El Morro.

The public acquisition aspect entitled El Morro residents to relocation assistance. That aspect is missing from the De Anza case. The residents' displacement in 2003 will not result from the City acquiring the property for a public use. Stephens is directly on point, and the El Morro example is inapposite. The required causal link between public acquisition and forced relocation is missing. The City owned the property prior to the original lease over forty years ago. As Kiewit points out, at the expiration of the lease, the tenants will have no legal rights left in the property. They will be tenants at sufferance and may be treated as trespassers.

II. Conversion of Mobile Home Park to Other Use (Gov. Code Section 65863.7)

A. Section 65863.7 does not apply.

Government Code § 65863.7 (Conversion of mobile home park to

other use) requires an owner to file a report to the local legislative body on the effect a conversion may have on displaced residents. (Subsection (a)). The local legislative body may require the private owner to take steps to minimize the impact on the displaced residents. The city's power to require mitigation steps be taken is permissive, not mandatory. In no case are the steps taken to exceed the "reasonable costs of relocation." (Subsection (e)). Subsection (h) applies the section specifically to charter cities.

Our issue turns on an interpretation of subsection (i):

> This section is applicable when the closure, cessation, or change of use is the result of a decision by a local governmental entity or planning agency not to renew a conditional use permit or zoning variance under which the mobilehome park has operated, has operated, or as a result of any other zoning or planning decision, action, or inaction. In this case, the local governmental agency is the person proposing the change in use for the purposes of preparing the impact report required by this section and is required to take steps to mitigate the adverse impact of the change as may be required under subdivision (e). (Emphasis added).

The closure of De Anza Mobile Home Park cannot logically be considered the "result" of any "decision, action, or inaction" on the part of the City. There is no case law interpreting § 65863.7. However, the legislature chose to use the words "result of" which are the same as those used in § 7260.

> The Legislature "is deemed to be aware of statutes and judicial decisions already in existence, and to have enacted or amended a statute in light thereof. [Citation.] Where a statute is framed in language of an earlier enactment on the same or an analogous subject, and that enactment has been judicially construed, the Legislature is presumed to have adopted that construction. [Citation.]"

People v. McGuire, 14 Cal. App. 4th 687, 694 (1993).

The courts have interpreted "result of" in § 7260 to require a direct causal relationship. In Stephens, the residents were not displaced as a result of the city's acquisition of the park and were therefore ineligible for relocation assistance under § 7260. In this case, the residents will not be displaced as a result of a City decision, action, or inaction, and therefore, cannot claim benefits under a similarly-worded § 65863.7.

The City did not make a zoning or planning decision which resulted in De Anza's closure. De Anza must close in 2003 when its lease expires because it is an illegal use of tidelands trust property. The state statute which granted an exception will not allow any extension in the lease, even if the City wanted to extend it. The City has no power to allow it to continue. It would be illogical to say, therefore, that the closure results from any City decision, action, or inaction.

Even if the state allows a waiver of the illegal tidelands use, the City cannot legally allow De Anza to remain open. To do so would require an approval of nonpark use under Charter § 55, which would require a two-thirds vote of the citizenry, or at least a new Charter provision, which would require a majority vote. Without such popular approval, the City cannot allow residential uses in dedicated public parks.

B. Even if Section 65863.7(i) were applied, the residents would not be entitled to relocation assistance.

Under § 65863.7(i), if a local government causes the dislocation, it is subject to the reporting requirements of the section, and "is required to take steps to mitigate the adverse impact of the change as may be required in subdivision (e)." (emphasis added). Assuming the City were the cause of the displacement, it would have to take the same steps as a private party would be required to take under Subsection (e):

> The legislative body, or its delegated advisory body, shall review the report, prior to any change in use, and may require, as condition of the change, the person or entity to take steps to mitigate any adverse impact of the conversion, closure or cessation of use on the ability of displaced mobilehome park residents to find adequate housing in a mobilehome park. The steps required to be taken to mitigate shall not exceed the reasonable costs of relocation. (Emphasis added).

This language clearly indicates "reasonable costs of relocation" are the maximum amount it would be in the City's power to compel. Any "steps to mitigate any adverse impact" may be adequate.

For example, the De Anza tenants' group has in the past suggested an extension of their use of the land to 2017. They argue this would allow them to amortize their equity over the remainder of the term. This, to them, would be adequate mitigation.

This is exactly what the City did in settling the original problem of the illegal lease with A.B. 447, and the notice to the tenants in 1982. At that time, the City agreed to the continued use because

> [i]t was felt that giving some limited assurance of a continued right to utilize the property until redevelopment occurs, or if no redevelopment occurs, until the expiration of the lease, would provide the tenants the opportunity to either sell their units for significant prices or continue to occupy their units knowing approximately 22 years in advance that the use would end in 2003. (Report to the Planning Commission *supra*).

The 1982 agreement was aimed at giving the tenants firm notice that the leasehold would expire in 2003, then twenty two years off, and that there was no way possible for the city, in the absence of an approving vote by the electorate, to extend the lease. Since 1982, all tenants have been given the following notice:

> [O]ccupants shall not be entitled to and may not claim:
>
> a. Any relocation allowances, benefits, monetary payments or any other rights of any kind or amount at any time whatsoever by reason of, or arising out of, the provisions of. . . Assembly Bill 447 or by virtue of any action or inaction of LESSEE or LESSOR pursuant to said Bill; or
>
> b. Any extension by LESSOR or LESSEE of the term of their individual subleases pursuant to any provision of the basic lease or by. . . Assembly Bill 447.

Even if § 65863.7 were applied to the City in this case, a persuasive argument can be made that the City has already taken adequate steps to mitigate losses to the tenants who will be displaced in 2003. The only obligation the City may have if § 65863.7 is applied is for following the reporting requirements.

III. San Diego Municipal Code Section 101.1002, Discontinuance of a Mobile Home Park

A. Section 101.1002 does not apply

Municipal Code § 101.1002 sets out procedures to discontinue mobile home parks in the City. The City Housing Commission, in

accordance with this section, laid out guidelines on relocation assistance to be provided if a mobile home park is discontinued. (Policy # 300.401).

However, De Anza is expressly excluded:

> [A]nything to the contrary in this section or in section 101.1002 notwithstanding, this section and section 101.1002 shall not apply to the mobilehome park located in Mission Bay generally known as De Anza Mobilehome Park. It is the intention of the City to deal with any discontinuance and relocation issues involved with De Anza Mobilehome Park by separate ordinance or resolution because of the unique conditions applicable to the De Anza Mobilehome Park.

San Diego, Cal., Code § 101.1001 (1993).

The City has the power to promulgate policies regarding the discontinuance of mobile home parks within its boundaries. It has the power to tailor such policies in ways it sees fit. In this case, the City had good reason to treat De Anza differently. It specifically found this necessary "because of unique conditions applicable" to De Anza - ie., that it is located on a site where residential uses are prohibited, and therefore continuing the mobile home park on that site beyond 2003 would be illegal.

The City also has the authority to amend the municipal code. The code sections discussed are subject to modification between now and 2003. Additionally, the Housing Commission policy has not been reviewed or approved by the City Council or the Housing Authority and is therefore also subject to amendment at any time.

B. Even if Housing Commission policies were applied, the residents would be eligible for minimal benefits.

Housing Commission Policy # 300.401 sets out a range of costs for relocating mobile homes. The range is $3,000 to $15,000. In cases where relocation is not feasible, the owner would receive:

> Seventy-five percent of actual loss in value to the displaced park resident, with value defined as the difference between the value of the mobile home on site, less any sale proceeds. On site value will be established by averaging the appraised value from appraisals made by an appraiser for the home owner and an appraiser for the park owner or lessee, both of whom will be selected from the City's list of certified appraisers. (Exhibit I, 1(b)(1)).

The provision is vague as to how value is determined. It does not mention the time frame from which the mobile home's value is determined, or whether the value of the lease is included. Clearly the provision was not written to include situations like De Anza, where the valuation of the mobile home has been impacted by an imminent termination of the leasehold. It would be illogical to assume Policy # 300.401, which clarifies a Municipal Code section which specifically excludes De Anza, would be written to consider the kinds of unique valuation problems this situation presents.

In any event, it is unlikely that the intent of the Housing Commission was other than an attempt to codify "reasonable relocation costs." The residents are claiming the City is liable for the full seventy-five percent of the value of their mobile homes (given their argument that the sale proceeds in 2003 are likely to be near zero). The costs to the City under this interpretation would almost certainly be in excess of reasonable relocation costs and therefore bring the City's provisions into conflict with Government Code § 65683.7(e). "Local legislation in conflict with general law is void. Conflicts exist if the ordinance duplicates [citations], contradicts [citation], or enters area fully occupied by general law, either expressly or by legislative implication [citations]." Western Oil & Gas Ass'n v. Monterey Bay Unified Air Pollution Control Distr. 40 Cal. 3d 408, 423 (1989).

Policy # 300.401 Exhibit I was promulgated "[t]o provide consistency in evaluating the adequacy of relocation plans. . . ." Read as such, and applied to situations unlike De Anza, the Policy's provisions are in line with § 65863.7(e). In fact, since the state statute provides no guidelines to determine reasonable relocation benefits under § 65863.7(e), the City's definition of reasonable relocation benefits is especially useful. Municipal legislation should, if possible be given a construction in harmony with state law to avoid the ordinance being declared a nullity. See Evans v. San Francisco Unified School District, 209 Cal. App. 3d 1478, 1483 (1989). Construing the ordinance to require relocation benefits in excess of reasonable relocation costs would be inappropriate.

It is also important to note that the Housing Commission guidelines are subject to modification from time to time, and that such guidelines do not create any specific rights in tenants in mobile home parks.

IV. The City Cannot Legally Make Relocation Payments to Residents Who Do Not Qualify as Low Income.

Article XVI, section 6 of the California Constitution prohibits cities from making gifts of public funds. "It is well

settled that the primary question to be considered in determining whether an appropriation of public funds is to be considered a gift is whether the funds are to be used for a public or private purpose." Cal. Teacher's Ass'n v. Board of Trustees, 82 Cal. App. 3d 249, 257 (1978).

Providing relief for the needs of the poor is a legitimate use of public funds. Providing relief for the needs of those who are not poor is not. The City has no power to use public funds to bail out private parties from bad business decisions. The state constitution does not allow it. In fact, it has long been said that even a moral obligation on the part of a public entity is not legally sufficient to justify a public benefit being conferred on a private party. See Veterans' Welfare Board v. Riley, 189 Cal. 159, 170 (1922). Even if the city felt it would be equitable to provide assistance to De Anza residents who do not qualify as low income, it would not be able to do so.

Conclusion

Since at least 1982, the residents of De Anza have known they will be required to move when the ground lease expires in 2003. Under none of the existing laws discussed above is the City under any obligation to provide them with relocation assistance when the lease on their park expires. In fact, the City cannot provide them with such assistance and further cannot allow them to remain on the property after 2003 without both state action and a vote of the citizens of San Diego.

MEMORANDUM OF LAW

DATE: July 11, 1994

TO: Jim Spotts, Director, Real Estate Assets Department

FROM: City Attorney

SUBJECT: De Anza Mobile Home Park - Relocation

Please see the attached memorandum prepared by a legal intern. I specifically asked the legal intern to provide me with "an objective review." You will note that the intern prepared an extensive analysis of the relocation law issues and concluded that the De Anza residents are not entitled to any relocation payment from the City. I agree with the conclusions.

I would recommend that we share this memorandum with the attorney for the De Anza residents as well as the attorney for the De Anza lessee. They will almost certainly want to do their own legal analysis and, as I have told the attorney representing the tenants, if he has any legal basis whatsoever to support a position that the City is legally obligated to make relocation payments, I would be pleased to review the matter again.

JOHN W. WITT, City Attorney
By
Harold O. Valderhaug
Chief Deputy City Attorney

HOV:ps:731.7
Attachment
ML-94-57
TOP
TOP

LESLIE E. DEVANEY
ANITA M. NOONE
LESLIE J. GIRARD
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OPINION NUMBER 99-2

DATE: July 15, 1999

SUBJECT: Applicability of San Diego Charter Section 219 to Portions of De Anza Harbor Resort Leasehold

REQUESTED BY: William T. Griffith, Director
Real Estate Assets Department

PREPARED BY: Prescilla Dugard, Deputy City Attorney

QUESTION PRESENTED

Do the limitations on leases of pueblo lands contained in San Diego Charter section 219 preclude the lease in excess of fifteen years of portions of pueblo lots 1208 and 1798 granted to the City by the State in 1964?

SHORT ANSWER

No. Because lots 1208 and 1798 were previously conveyed to the State of California, and subsequently conveyed back to the City pursuant to a grant in 1964, years after the adoption of Charter section 219, they are not subject to the limits of the section. Section 219 applies only to those pueblo lots that were part of the original Pueblo Lands grant that were still City-owned when the predecessor to Charter section 219 was adopted in 1909, and which have remained in continuous City ownership.

BACKGROUND

The area in Mission Bay commonly known as De Anza Harbor Resort is currently leased by the City to De Anza Harbor Resorts, LLP [De Anza], pursuant to a lease dated May 18, 1951 (and subsequently amended). The leased property includes portions of pueblo lots 1208 and 1798 [the Lots] of the Pueblo Lands of San Diego, according to a map made by James Pascoe in 1870.[1] At the time of the original lease between the City and De Anza's predecessor in interest, the City did not own the Lots; they were a part of State park land leased to the City. In 1963, the State granted the Lots to the City in trust as part of Mission Bay State Park contingent upon the execution of an agreement between the City and the State. In 1964, the City and the State entered into the Mission Bay State Park Agreement and Grant of Trust effecting the grant.

At a City Council hearing on February 1, 1999, the Council received public testimony on the potential redevelopment of the De Anza Harbor Resort. At that time, questions were raised about the City's ability to enter into any long-term lease of the property, in light of the provisions of Charter section 219, which states that it precludes the lease of pueblo lands in excess of fifteen years. This opinion resolves the question of which of the original pueblo lands are subject to the limitations contained in Charter section 219.

ANALYSIS

History of the Pueblo Lands

On April 10, 1874, the City received title to the Pueblo Lands of San Diego as successor to the Mexican pueblo of San Diego [the 1874 Patent]. The attached "Pueblo of San Diego (A brief history of the legal status of the Pueblo Lands of San Diego)" [the Pueblo Lands History][2] provides a concise report of the history of the pueblo land grant to the City and further describes pertinent events leading to the adoption of the current San Diego Charter section 219.

---

[1]The map was filed in the Office of the Recorder of San Diego County, November 14, 1921, and is known as Miscellaneous Map No. 36. *See* copy attached as Exhibit "A."

[2]Attached as Exhibit "B," 1952 City Att'y MOL 311.

History of San Diego Charter Section 219

San Diego Charter section 219 provides as follows:

> No sale of Pueblo Lands owned by The City of San Diego which are situated North of the North line of the San Diego River shall ever be valid and binding upon said City unless such sale shall have been first authorized by an ordinance duly passed by the Council and thereafter ratified by the electors of The City of San Diego at any special or general municipal election. The City Manager shall have authority to lease Pueblo Lands, provided that any lease for a term exceeding one year shall not be valid unless first authorized by ordinance of the Council. No lease shall be valid for a period of time exceeding fifteen years.

Section 219 was part of the Charter adopted by the City of San Diego in 1931. The Pueblo Lands History demonstrates that this charter provision derives from a charter amendment adopted January 12, 1909 [the 1909 Amendment]. The 1909 Amendment was a response to the court's ruling in *Ames v. City of San Diego*, 101 Cal. 390 (1894), in which the City lost title to certain pueblo lots through a claim of adverse possession. The court's ruling was based upon the City's ability to freely alienate the lands. The 1909 Amendment was designed to prevent this from occurring again. It read:

> 50. (a) That all pueblo lands owned by the City of San Diego, lying and being situated north of the north line of the San Diego river be, and the same are hereby reserved from sale until the year 1930, *provided, however*, that at any time should it be desired to sell any part or portion of such public lands prior to the year 1930, the sale thereof may be authorized by an ordinance duly passed by the Common Council and ratified by the electors of the City of San Diego at any special or general municipal election. The Common Council shall levy annually, in addition to all other taxes provided for in this charter, 2c on each one hundred dollars valuation of property for the purpose of improving said pueblo lands herein reserved from sale.
>
> (b) The Common Council may provide for the sale and conveyance or lease of *all other lands now or hereafter owned by said city* not dedicated or reserved for public use; but all leases and sales shall

> be made at public auction, unless otherwise approved by ordinance after publication or notice thereof for at lease three (3) weeks. No lease shall be made for a longer term than two years except by an ordinance passed by an affirmative vote of two-thirds of the members of the Common Council (emphasis added).

The reading of the 1909 Amendment demonstrates that the provision was intended to prevent sale of only those pueblo lands then in City ownership based upon the following facts: (1) the provision uses language in the present tense, "are reserved" and (2) subdivision (a) does not refer to pueblo lands "hereafter owned" as does subparagraph (b). Because this language was not included in subparagraph (a), standard principles of legislative interpretation lead to the conclusion that the section was not intended to protect pueblo lands acquired after the date of the provision.

In 1929, the pueblo lands reservation issue was before the voters again in the form of a charter amendment. The description of propositions to be voted upon described the item as follows:

> Amend Sub-section 48(a) of Section 1, Chapter II, Article II of the City Charter. This amendment provides that the City pueblo lands lying north of the San Diego river shall be reserved from sale until the year 1940, instead of the year 1930, as now provided.

As a result of the 1929 election, the charter section was amended to read as follows:

> 48 (a). That all pueblo lands owned by the city of San Diego lying and being situated north of the north line of the San Diego river, be, and the same are hereby reserved from sale until the year 1940; *provided, however*, that at any time should it be desired to sell any part or portion of such pueblo lands prior to the year 1940, the sale thereof may be authorized by an ordinance duly passed by the common council and ratified by the electors of the city of San Diego at any special or general municipal election; *and provided, further*, that if at any time it should be desired to lease any part or portion of such public lands prior to the year 1940, the leasing thereof may be authorized by an ordinance duly passed by the common council; *provided*, that no lease so authorized shall be for a longer period of time than fifteen years. The common council shall levy, annually, in addition to all other taxes provided for in

> this charter, two cents on each one hundred dollars valuation of property for the purposes of improving said pueblo lands herein reserved from sale. (Italics in original.)

Thus, in 1929, the City added 10 years to the restriction on the sale of pueblo lands north of the north line of the San Diego river and added a restriction on the lease of those same lands.

In 1931, the City of San Diego reformed itself, losing the five member common council and adopting a freehold charter, containing the current Section 219. This section is a virtual restatement of the 1929 amendment, without the added language allowing taxation for improvement of the pueblo lands and without the 1940 expiration date.

Based upon the review of the legislative history of Section 219, as outlined above, it is the City Attorney's opinion that merely having the designation "pueblo lot no. __" on a piece of property does not answer the question of whether Charter section 219 controls the City's disposition of that property. That designation appears to be part of the legal description of a lot irrespective of who owns the lot. Section 219 applies only to pueblo lands north of the north line of the San Diego river[3] that were part of the 1874 Patent and still in City ownership when the 1909 Amendment was adopted to protect those lands, and which have remained in continuous City ownership since that time. Disposition of any other City-owned property is determined by any limitations contained in the original grant of ownership in that property. Because the City's current ownership interest in the Lots is through the State grant acquired in 1964, disposition of the Lots, including lease limitations, is controlled by the provisions of Chapter 142 of the Statutes of 1945, as amended by Chapter 1455 of the Statutes of 1955 (which provide for a fifty-year limit on leases).

This analysis is consistent with prior opinions and memoranda of this office relating to the disposition of pueblo lands.[4] To interpret the provision so broadly as to encompass pueblo lands regardless of when acquired would lead to the unintended result of subjecting any property

---

[3]*See* attached for reference a map showing the course of the San Diego River as it was at the time of the adoption of the original Charter provision (Exhibit "C"). Pueblo lots have been overlaid to show which lots lie north of the boundary as provided in the Charter.

[4]*See* attached 1956 City Att'y Memorandum to the Mayor and Council (Exhibit "D"). This memorandum provides a thorough analysis of the then status of ownership of various parcels in Mission Bay, including how the City acquired the parcels. *See also* 1981 Op. City Att'y 7 and 1976 City Att'y MOL 286.

owned or acquired by the City north of the north line of the San Diego River to the Section 219 restrictions.

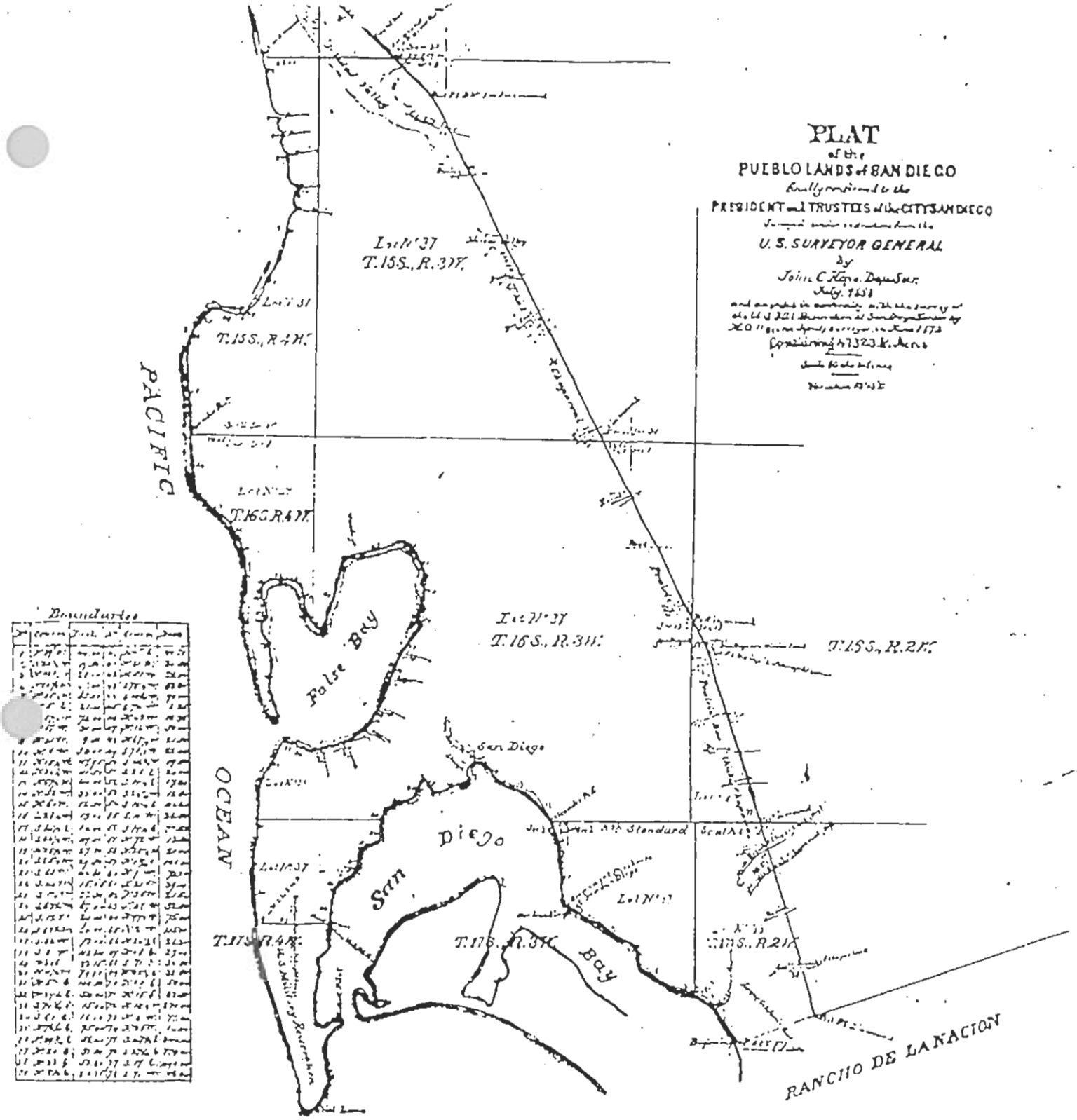
CONCLUSION

It is clear from the history of San Diego Charter section 219 and the pueblo lands that the intent of the charter provision as originally adopted was to preserve the pueblo lands north of the north line of the San Diego river then in City ownership. Current Charter section 219 merely lifted the time limit on the protection of those lands. Therefore, it is the City Attorney's opinion that the limitations of Charter section 219 apply only to those of the pueblo lands lying north of the north line of the San Diego river (as depicted on Exhibit "C") granted to the City of San Diego as part of the 1874 Patent that were in City ownership on January 12, 1909. Any property acquired by the City after that date or south of the line depicted on Exhibit "C" is subject only to the restrictions and limitations of the applicable grant of title.

Respectfully submitted,

CASEY GWINN
City Attorney

PD:lc:cdk(731.7x043)
Attachments
LO-99-2



Affixed Copies to U.S. Survey

Wm. Drummond
Commissioner of the General Land Office.

The foregoing Plat of the survey of the Pueblo Lands of San Diego from which the original has been made has been examined and approved and ordered filed in this office

U.S. Surveyor General's Office
San Francisco, California
February 12th 1874

J. C. Hays
U.S. Surv. Gen. Cal.

EXHIBIT A

cc: LMF

5 fax + copy 4 of 4

LESLIE E. DEVANEY
ANITA M. NOONE
LESLIE J. GIRARD
SUSAN M. HEATH
GAEL B. STRACK
ASSISTANT CITY ATTORNEYS

PRESCILLA DUGARD
DEPUTY CITY ATTORNEY

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

Casey Gwinn
CITY ATTORNEY

CIVIL DIVISION
1200 THIRD AVENUE, SUITE 1100
SAN DIEGO, CALIFORNIA 92101-4100
TELEPHONE (619) 533-5800
FAX (619) 533-6582

MEMORANDUM OF LAW

DATE: March 28, 2001

TO: William T. Griffith, Real Estate Assets Director

FROM: City Attorney

SUBJECT: Proposed Mission Bay Hotel with "Pre-sold" Reservations

QUESTIONS PRESENTED

May the City, pursuant to both San Diego Charter section 55 and restrictions on the use of tidelands trust property, lease dedicated parkland in Mission Bay to permit the development of a hotel with pre-sold reservations? What, if any, additional restrictions would be necessary for a hotel with pre-sold reservations to be permissible?

SHORT ANSWER

Yes. Consistent with the tidelands trust doctrine, and under Charter section 55, the City may lease dedicated parkland in Mission Bay for development of a hotel with pre-sold reservations provided that such a hotel is determined to be reasonably necessary to accommodate park visitors. In addition, and to ensure that access by the general public to the tidelands and dedicated parkland is maintained, we recommend that an appropriate policy be adopted which requires: (1) the total number of units with pre-sold reservations within Mission Bay Park be limited to ensure sufficient rooms are still available to the general public on a first come, first served basis; (2) any unused units be made available to the general public on a daily rental basis; (3) contracts permitting such uses contain audit provisions permitting the City to audit the use and availability of the rooms consistent with the purported and intended purpose and operation of the hotel; (4) contracts permitting such uses include specific provisions to ensure the occupancy of the units is transient in nature and no property rights are conveyed for individual units; (5) the sale of vacation credits provides that the credits expire with the ground lease, regardless of the date of termination; and (6) pre-sold reservations are limited to one-week increments.

BACKGROUND

We are informed that the City is currently in negotiations with a developer for the redevelopment of dedicated City parkland in Mission Bay with a number of visitor-serving uses. The developer has proposed two hotels on the site, one to include a "vacation club," outlined in the memorandum attached as Exhibit A. The proposed project is similar to a vacation timeshare project, except that it would not include any ownership of individual units, as is common in typical timeshare projects. Instead, vacationers would purchase vacation credits and then make reservations, just like at any other resort. The vacation credits would give the vacationer a right to a reservation for one week of vacation time each year for a 50-year period. The proposed project would provide for significant use by members of the public and would make unreserved units available to the general public on a daily basis.[1] The proposed project is also on filled tidelands held in trust by the City subject to restrictions imposed by the tidelands trust as overseen by the State Lands Commission.

ANALYSIS

I.

THE PROPOSED USE IS CONSISTENT WITH THE TIDELANDS TRUST.

In 1996, the State Attorney General issued an opinion approving the lease of filled tidelands for construction of a timeshare resort on the assumption that the timeshare had the following features: (1) a vacation-oriented development with typical one-week occupancy by the timeshare owner; (2) units not timely reserved by the owner could be rented on a nightly basis by the timeshare management company; (3) owners' rights to occupy units would terminate with the ground lease; and (4) the resort would afford improved access to the shoreline for use by the general public. 79 Op. Cal. Att'y. Gen. 133, 141 (1996). The Attorney General approved the use on tidelands because in considering the duration of occupancy and exclusivity of ownership, the Attorney General found the modern timeshare to be more like a hotel than a residential use. *Id.* at 140. However, the Attorney General also stated that in approving a specific use the public Agency trustee (e.g., the City of San Diego) would have to assess "how much tideland property would be committed to the timeshare resort relative to adjacent public trust land" in order to properly determine the impairment of public trust lands by the use.

Here, because the vacationers acquire no real property interest in the units and therefore do not own or control individual units, the proposed project is even more like a hotel than the

---

[1]The memorandum does not include any information regarding how far in advance vacationers with credits would need to make reservations, or how the proposal might affect the ability of members of the general public to make extended-stay reservations.

timeshare resort analyzed by the Attorney General. With control of the units retained in the City's lessee, rather than multiple individual owners, the City can better ensure that unreserved units are made available to the general public. However, the ability to purchase fifty years of one-week vacations at the hotel in advance limits the availability of rooms to the general public. Theoretically, if all of the units in the Park were subject to pre-sold reservations and all of the vacationers used their vacation time, there would be no units in the Park available to the general public on a first come, first served basis. To ensure the transient occupancy is retained and that an adequate number of rooms are available to the general public on a first come, first served basis, the City Attorney recommends that an appropriate policy be adopted that ensures: (1) the total number of units with pre-sold reservations within Mission Bay Park is limited to ensure sufficient rooms are still available to the general public on a first come, first served basis; (2) any unused units are made available to the general public on a daily rental basis; and (3) contracts permitting such uses contain audit provisions permitting the City to audit the use and availability of the rooms to ensure consistency with the purported purpose and represented operation of the hotel. If adopted, such a policy will help ensure that the use and operation of such hotels remains consistent with the tidelands trust.

II.

THE PROPOSED USE IS CONSISTENT WITH CHARTER SECTION 55.

Charter section 55 provides that dedicated park land

> shall not be used for any but park [and] recreation . . . purposes without such changed use or purpose having been first authorized or later ratified by a vote of two-thirds of the qualified electors of the City voting at an election for such purpose.

The general rule for permissible park uses has been stated by this Office as follows:

> [A] proper park use is one that does not interfere with the enjoyment by the general public of the park for park and recreational purposes and is consistent with and complementary to or enhances such purposes.

1975 Op. City Att'y 139, 140.

Hotel uses have long been upheld by the courts as permissible park uses. *Harter v. San Jose*, 141 Cal. 659 (1904). *See also, Spires v. City of Los Angeles*, 150 Cal. 64, 66 (1906) (recognizing the general approval of hotels as park uses). The City Attorney has previously advised that a hotel is permissible in a dedicated public park where the hotel is reasonably determined to be needed to accommodate the needs of park visitors. 1984 City Att'y MOL 234.

The City has approved leases for a number of hotels on dedicated City parkland, including the Mission Bay Hilton, the Princess Resort, and the Dana Inn. Residential use, on the other hand, is inconsistent with the dedication of parkland for the benefit of the public. *See, e.g., Griffith v. City of Los Angeles*, 78 Cal. App. 2d 796 (1974) (allowing residential use only as a temporary emergency housing measure).

The salient feature of hotel use that makes the use permissible on dedicated parkland is the transient nature of the occupancy. Transient occupancy does not create a real property interest which would include the right to exclude others. It continues to allow the parkland to be available for use by the general public and enhances the general public's use by making transient lodging available for visitors. As explained above, timeshare resorts are typically a hybrid between a hotel and a residential use. These facilities generally permit the "ownership" of units for transient occupancy periods. Such a use would not be consistent with Charter section 55; however, the vacation club concept proposed here does not appear to be inconsistent with that purpose provided that the use of such facilities does not become de facto "ownership" by a relative few.

Toward that end, we recommend that, in addition to the policy recommended above and the general finding that such a hotel is determined to be reasonably necessary to accommodate park visitors, a further policy be adopted which provides that any contract permitting the described use includes specific provisions to ensure that: (1) the occupancy of the units is transient in nature and no property rights are conveyed for individual units; (2) the sale of vacation credits should provide that the credits expire with the ground lease, regardless of the date of termination; and (3) vacation credit sales should be limited to one-week increments.

CONCLUSION

The project, as proposed, will not be inconsistent with the tidelands trust and Charter section 55 if a hotel use in Mission Bay Park is reasonably determined to be necessary to accommodate Park visitors. In addition, in order to ensure that the proposed use remains consistent with both the tidelands trust and Charter section 55, we recommend that an appropriate policy be adopted which requires: (1) the total number of units with pre-sold reservations within Mission Bay Park be limited to ensure sufficient rooms are still available to the general public on a first come, first served basis; (2) any unused units be made available to the general public on a daily rental basis; (3) contracts permitting such uses contain audit provisions permitting the City to audit the use and availability of the rooms consistent with the purported and intended purpose and operation of the hotel; (4) contracts permitting such uses include specific provisions to ensure the occupancy of the units is transient in nature and no property rights are conveyed for individual units; (5) the sale of vacation credits provides that the credits expire with the ground lease, regardless of the date of termination; and (6) pre-sold reservations are limited to one-week increments. To the extent any of the land proposed for lease includes tidelands, the use must also comply with the guidelines provided by the Attorney General for tidelands use.

This Memorandum of Law is limited to the facts as represented to us, and is further limited to the provision of the described project within Mission Bay Park. Any application of these principles to different projects or locations other than Mission Bay Park must be specifically analyzed.

CASEY GWINN, City Attorney

By Prescilla Dugard
Prescilla Dugard
Deputy City Attorney

PD:lc
Attachment
cc: Marcia McLatchy
ML-2001-4

DUPLICATE

MEMORANDUM OF UNDERSTANDING

JUL 27 1999

This Memorandum of Understanding [MOU] is entered into this ____ day of _____, 1999, by and between The City of San Diego, a municipal corporation [City], and De Anza Harbor Resort & Golf, LLC [De Anza]:

I. FACT RECITALS.

A. Existing Leases. City has entered into the following three leases with the following expiration dates:

Premises	Lessees	Expiration Date
Mission Bay Golf Center	De Anza Harbor Resort & Golf, LLC	July 5, 2001
De Anza Harbor Resort	De Anza Harbor Resort & Golf, LLC	November 23, 2003
Campland On The Bay	De Anza Campland, LLC	November 7, 2017

B. Mission Bay Master Plan Update (1994). City has approved, and the California Coastal Commission has certified as a Local Coastal Plan, the Mission Bay Master Plan Update (1994) [Master Plan Update]. The Master Plan Update designates Harbor Resort as a 76-acre Special Study Area, of which up to 60 acres may be developed with guest housing. In addition, the Master Plan Update designates the Mission Bay Golf Course [Golf Course] leasehold area as "Golf Course". The Master Plan Update also designates Campland for future conversion to a wetland area. City acknowledges that City has not imposed and De Anza has not assumed financial or other responsibility for this conversion.

C. Harbor Resort/Long Term Rental Agreements. Harbor Resort currently is used as a mobile home and recreational vehicle park, consistent with the Kapiloff bill [California A.B. 447, Ch. 1008 (1981)]. Use of the Harbor Resort site as a mobile home park after November 23, 2003, is not authorized by State law and is prohibited by the City Charter unless approved by two-thirds vote of the electorate. In 1981, De Anza's predecessors and City entered into the 10th Amendment to the existing Harbor Resort lease. The 10th Amendment contemplates that the Harbor Resort leasehold area will be redeveloped to its highest and best use. De Anza has the right to submit a Redevelopment Program and City has an obligation to consider in good faith the proposed Redevelopment Program. Pursuant to the 10th Amendment, from 1982 to the

DOCUMENT NO. RR-292007
FILED JUL 27 1999
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

present, De Anza and its predecessors have paid City in excess of $8,000,000 in the form of rent increases, which were agreed to as consideration for City's agreement to review and consider in good faith De Anza's Redevelopment Program for the Harbor Resort leasehold. De Anza contends that in reliance on the terms of the 10th Amendment, De Anza's predecessors entered into Long Term Rental Agreements [LTRAs] with approximately 98% of the mobile home owners at Harbor Resort. The LTRAs govern the benefits the mobile home owners are to receive at the expiration of the lease term in 2003 if De Anza proceeds with redevelopment of the Harbor Resort leasehold area. The mobile home owners have claimed that they are due substantial compensation from City far in excess of the benefits provided under the LTRAs upon closure of the Harbor Resort mobile home park. The City Attorney has opined that City has no legal obligation to pay relocation costs to the mobile home owners.

D. Payments to Mobile Home Owners Upon Park Closure/Relocation Park. De Anza proposes to enter into an option agreement with the City to provide for a new lease for the Harbor Resort and the Mission Bay Golf Center [the Option Agreement]. If the City and DeAnza enter into the Option Agreement and the New Lease, upon De Anza's exercise of the option and pursuant to the terms of these agreements, De Anza will assume full responsibility for all costs associated with closing the mobile home park, including any sums to be paid to the mobile home owners under the LTRAs. De Anza has further stated that it will continue to work with City and the mobile home owners to find a suitable site for relocation of the mobile homes.

E. Community Review. By entering into this Memorandum, City and De Anza are committed to provide full public review of the proposed redevelopment of the property pursuant to the approved Mission Bay Master Plan Update.

F. Settlement. City and De Anza wish to proceed with an overall resolution of the various issues regarding the redevelopment of the Harbor Resort and Golf Course leasehold areas. In consideration of De Anza's agreement to, upon exercise of the option, assume full responsibility for all costs associated with closing the mobile home park, including any sums to be paid to the mobile home owners under the LTRAs, and because City anticipates that there will be enhanced services and revenues to City if the property is redeveloped consistent with the approved Master Plan, City Council is willing to enter into this MOU and authorize exclusive negotiations with De Anza on the items set forth below.

II. DE ANZA REDEVELOPMENT PROGRAM

A. Processing of Redevelopment Program/Vested Rights. City shall process for review, in accordance with the time line attached hereto as Attachment "A", De Anza's application for a Redevelopment Program (summarized on Attachment "B"). This summary is included in this MOU for information purposes only. In approving the MOU, City is not agreeing to nor bound by any of the proposals in the Redevelopment Program. During the environmental review process, alternative land uses consistent with the Mission Bay Master Plan will be analyzed for potential environmental and fiscal impacts. It is contemplated that upon approval of

the Redevelopment Program any subsequent approvals will be reviewed by City, through the normal project review process applicable to Mission Bay lessees. Concurrent with the processing of the Redevelopment Program, City and De Anza may negotiate a Development Agreement which provides a vested right to go forward with the Redevelopment Program. It is contemplated that De Anza will propose as extraordinary benefits under any Development Agreement the assumption of the responsibility to pay the costs associated with closing the mobile home park including the sums to be paid under the LTRA to mobile home owners, the advance of the costs of construction of the athletic fields described in paragraph II.C. of this MOU and the advance of the $1,000,000 for the relocation of the boat and ski club described in paragraph II.C. of this MOU.

B. CEQA Requirements. City will comply with the requirements of the California Environmental Quality Act [CEQA] in connection with the review and approval of the Redevelopment Program. City and De Anza acknowledge that architectural details of the project improvements to be constructed pursuant to the approved Redevelopment Program are not currently known. For CEQA review purposes, therefore, De Anza will propose design guidelines and provide site plans in adequate detail to assure that any potentially significant adverse environmental impacts of the proposed Redevelopment Program will be addressed as required by CEQA. If CEQA or City's regulations require any additional environmental review, City may impose additional mitigation measures, as permitted by law, to mitigate any additional potentially significant adverse environmental impacts.

C. Golf Course/Exchange of Property. Under the new lease: (1) City and De Anza will exchange on an acre by acre basis the property currently leased by the Mission Bay Boat and Ski Club for the acreage immediately adjacent to the athletic fields on the northwest corner of the Golf Course leasehold area; (2) De Anza will cause the construction of new athletic fields on City's behalf on the property to be exchanged for the Mission Bay Boat and Ski Club property and De Anza will receive a rent credit for the cost of constructing the athletic fields; and (3) De Anza will make available a market rate loan of up to $1,000,000 to the Mission Bay Boat and Ski Club for its relocation to South Shores of Mission Bay Park. In the event of default by Mission Bay Boat and Ski Club, De Anza will receive a rent credit for the amount of the default and related costs.

D. Incorporation of North Mission Bay Drive into New Lease. City will process any required application for the incorporation into the premises of the New Lease that portion of North Mission Bay Drive which currently runs between the Golf Course and Harbor Resort leasehold areas. City will process such application in a timely manner so that the area will be included within the premises of the new lease described in Paragraph III of this MOU.

III. OPTION AGREEMENT AND NEW LEASE. City authorizes the City Manager to enter into exclusive negotiations with De Anza (or its designee) on an Option to enter into a new lease for the lesser term of 50 years or the maximum lease period allowed by law for the areas

described in Section II.D. The expiration date for the exercise of the Option will be May 23, 2003.

IV. COOPERATION OF CITY.

City will use its best efforts to comply with the schedule attached as Attachment "A". In addition, City will cooperate with De Anza and support De Anza's efforts to obtain all required approvals and permits for the development of the property pursuant to the approved Redevelopment Program. All processing costs will be borne by De Anza if and as approved by City. City acknowledges and confirms that any hearings and determinations required pursuant to Government Code Section 65863.7 shall be held and all required notices shall be given.

V. INTERPRETATION.

In the event of inconsistency between this MOU and the Option Agreement and New Lease, if and as approved by City, the provisions and conditions of the Option Agreement and new lease will govern.

Date: JUL 27 1999

The City of San Diego,
a municipal corporation,

By: _____ FOR
Real Estate Assets Director

Date: August 2, 1999

De Anza Harbor Resort & Golf, LLC, a limited liability company,

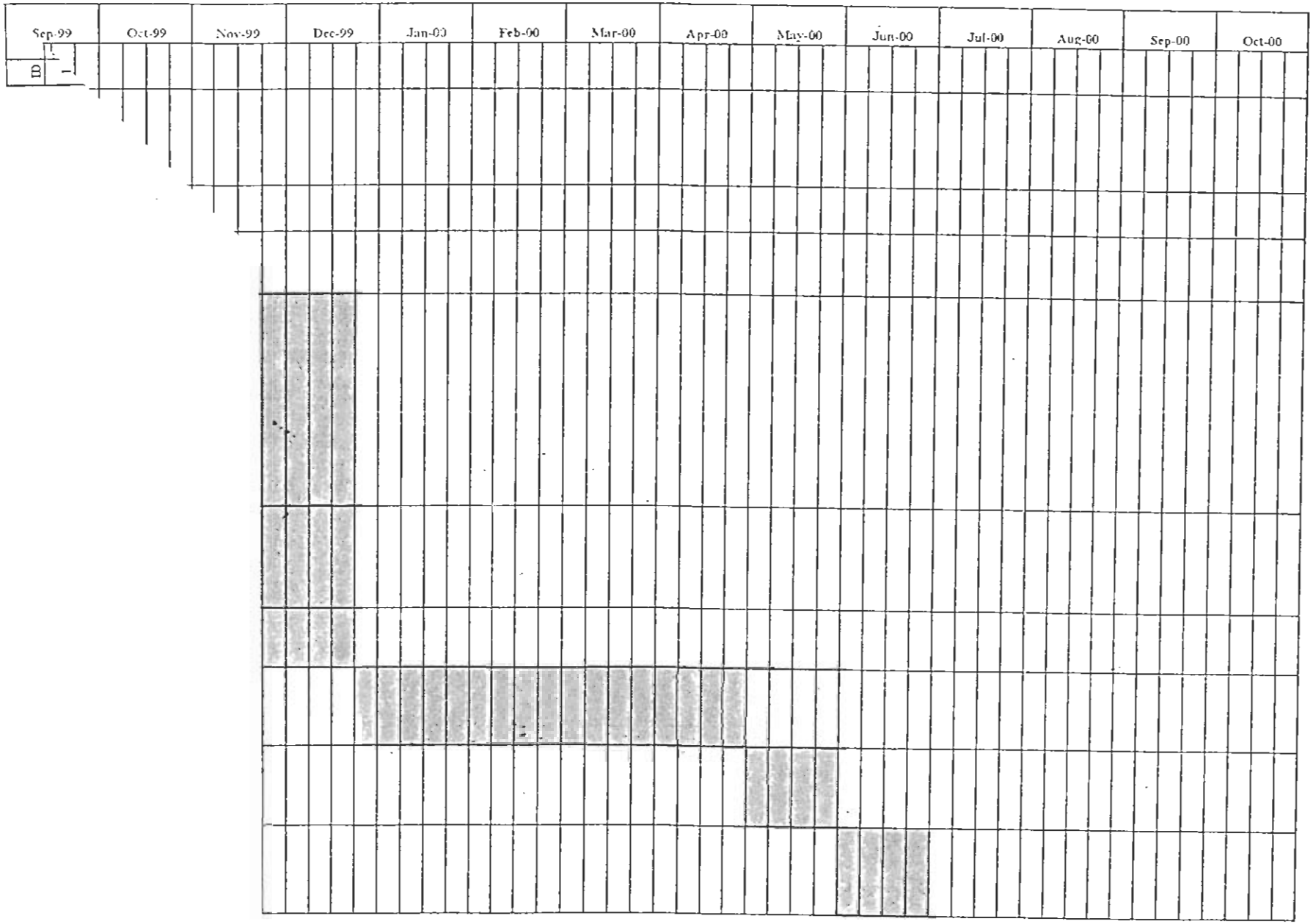
By: _____

APPROVED AS TO FORM AND LEGALITY
THIS 2nd DAY OF August, 1999:

CASEY GWINN, City Attorney

By: _____
Deputy City Attorney

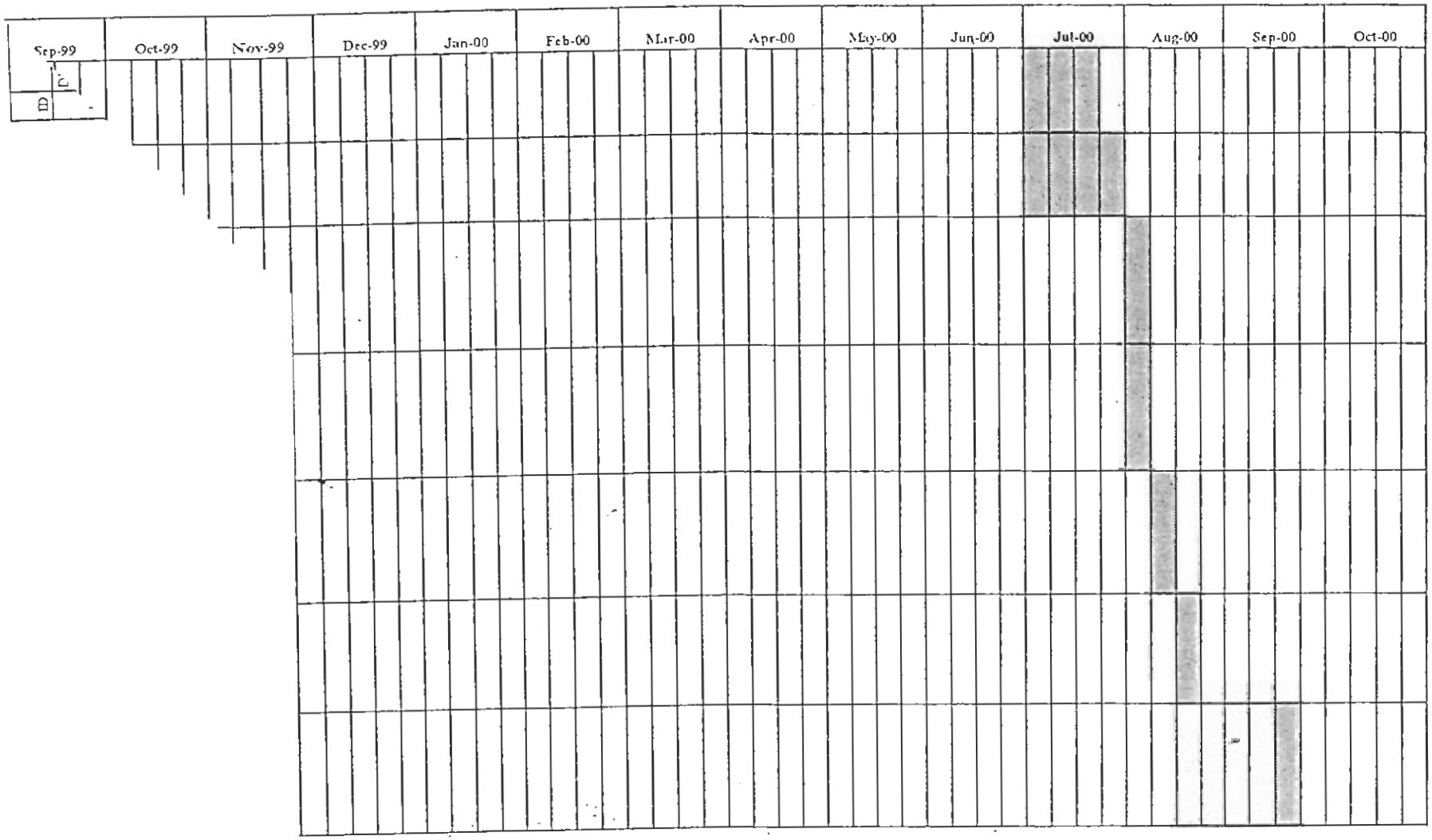
DE ANZA HARBOR RESORT TIME LINE
ATTACHMENT A



ne Revised to Reflect Council Action on 7-27-99 (A)

7/28/99

DE ANZA HARBOR RESORT TIME LINE
ATTACHMENT A



ine Revised to Reflect Council Action on 7-27-99 (A)

7/28/99

Attachment "B"

Summary of Proposed Redevelopment Program

The following points summarize the Redevelopment Program which De Anza is submitting for review by City.

1. Golf Course and Harbor Resort. Consistent with the Master Plan Update, De Anza will have the right to retain the Golf Course as a golf course after July 5, 2001, and will have the right to redevelop the Harbor Resort with guest housing after November 23, 2003. De Anza's Redevelopment Program returns approximately 21. 5 to 24.5 acres of land currently designated for commercial use to public park land, and provides for development of a resort hotel on approximately 51.5 to 55 of the 76 acres currently occupied by the Harbor Resort mobile home park. (The precise acreages will depend on the location of the park site, discussed in Sections 1.b. and c., below.) The Redevelopment Program includes:

a. Development of a 600-unit resort hotel (which may include up to 300 timeshare units) with ancillary uses;

b. Development of approximately 10 acres of park area, either in the northeastern portion of the existing mobile home park site and immediately west of the De Anza Cove Park or on De Anza Point or immediately east of the athletic fields at Bond Street and Grand Avenue;

c. Development of an approximately 11.5 to 14.5 acre public use zone around the perimeter of the site, which shall include the continuation of the biking and jogging path around the periphery of De Anza Point (the public use zone acreage varies according to the park location - approximately 11.5 acres with park on De Anza Point, approximately 14.5 acres with park in northeast corner of site, and approximately 14.9 acres with park on Grand Avenue); and

d. Reconfiguration and expansion of the golf course into the current Harbor Resort leasehold area.

(R-2000-68)

RESOLUTION NUMBER R- 292007

ADOPTED ON JUL 27 1999

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager or his duly designated representative is authorized to execute a Memorandum of Understanding with De Anza Harbor Resort and Golf LLC, for review of a Redevelopment Plan, establishment of a process for review, and negotiation of an option to lease for the Redevelopment Plan area (as more fully discussed in City Manager Report No. 99-148), a copy of which is on file in the office of the City Clerk as Document No. RR- 292007.

APPROVED: CASEY GWINN, City Attorney

By _____
Prescilla Dugard
Deputy City Attorney

PD:cdk
07/09/99
Or.Dept:REA
R-2000-68

Passed and adopted by the Council of San Diego on JUL 27 1999

by the following vote:

YEAS: Mathis, Wear, Kehoe, Warden, Stallings, McCarty, Vargas, Mayor Golding.

NAYS: Stevens.

NOT PRESENT: None.

AUTHENTICATED BY:

SUSAN GOLDING
Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(Seal)

By: MARY A. CEPEDA, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION NO. R- 292007, passed and adopted by the Council of The City of San Diego, California on JUL 27 1999.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

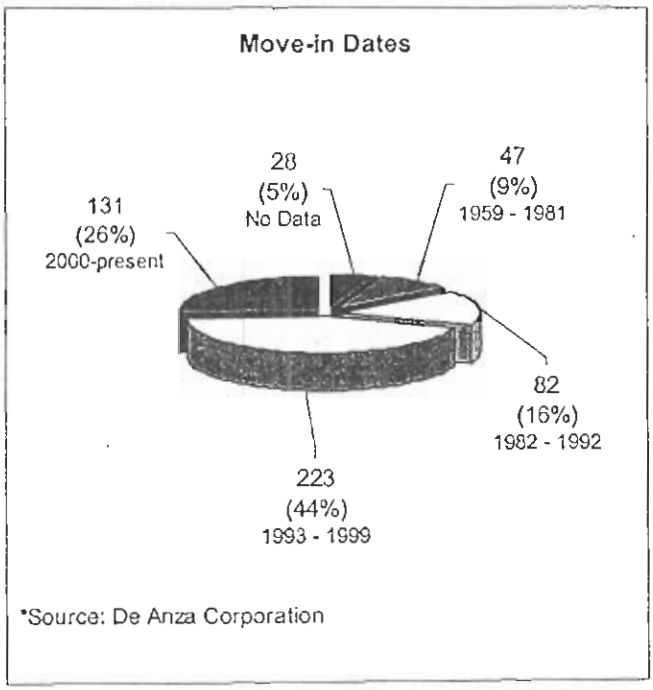
By: Mary A. Cepeda, Deputy

DEMOGRAPHIC INFORMATION
DE ANZA MOBILEHOME PARK

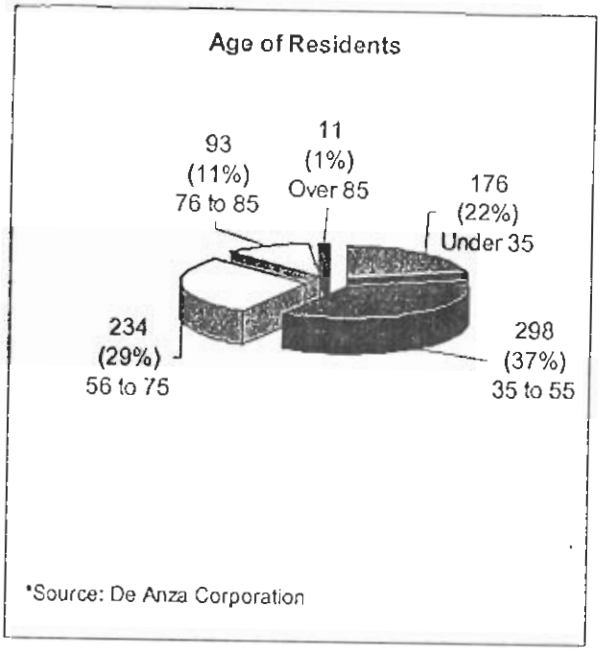
The demographic information contained in this report was made available by the De Anza Management Company from tenant records provided at the time of tenant move-in. It should be noted however, that the records may not be entirely accurate and complete due to the fact that certain information may not have been provided to the Management Company by the tenant or historical data was not available. Information on household income was obtained from the U.S. Census Bureau from the 2000 Census.

Move-in Dates

There are currently 511 mobile homes sites at De Anza and 8 of the sites are vacant. Out of that total, 85 percent (436 units) moved in after 1982. As noted in the report, 1982 is when the City and De Anza entered into a lease amendment which states that the residential mobile home park use shall cease upon lease expiration. All of the tenants signed long term rental agreements and were made fully aware of the lease expiration date of November 23, 2003 and that their residential use of the property would no longer be permitted following that date. Only 9 percent (47 units) have resided in the park prior to 1982 and these tenants have all signed long term rental agreements.



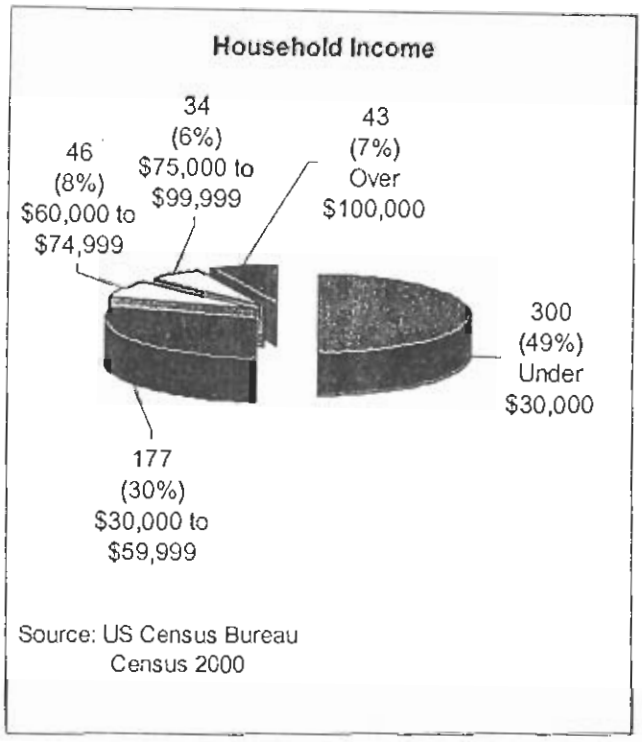
It is also important to note that De Anza has had a fairly high turnover rate within the last 10 years with 69 percent (354 units) moving in after 1993. In fact, a significant number of tenants, 131 units or 26 percent moved in after 2000. All of these tenants signed long term rental agreements and were made fully aware of the lease expiration date of November 23, 2003. Additionally, De Anza management has identified several suitable relocation sites but they all have been rejected by the residents.



Age of Residents

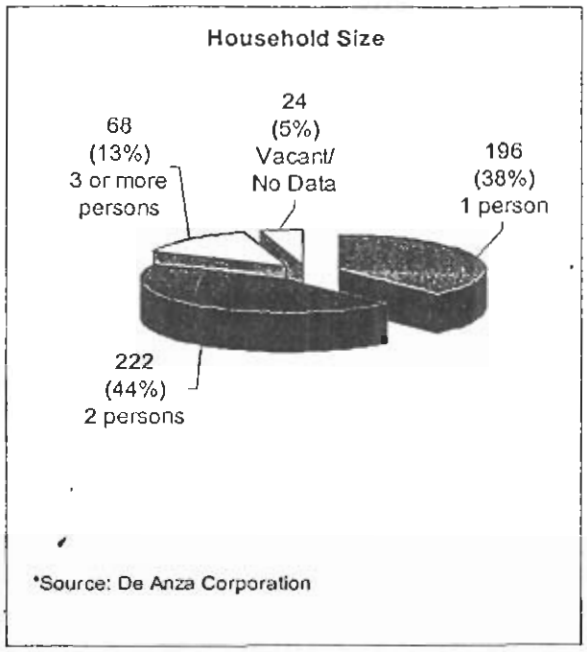
The average age of De Anza residents is 51 years old. Over half of the residents (58 percent, 474 residents) are under the age of 55, with 22 percent (176 residents) under the age of 35. Almost 29 percent (234 residents) are between the ages of 56 and 75 years old. About 11 percent (93 residents) are between the ages of 76 and 85 and 1 percent (11 residents) are over the age of 85.

Household Income



The 2000 Census reported 600 households in the census track block group that includes De Anza. Approximately half of the block group (300 households) reported an annual income $30,000, which is 50 percent of the median area income and is considered very low income for a family of four. It is also important to note that 21 percent (123 households) earn more than $60,000 a year, 7 percent (43 households) earn more than $100,000 a year.

The San Diego Housing Commission offers assistance to very low income families for replacement housing through the U.S. Department of Housing and Urban Development's (HUD) Housing Choice Voucher Program, also known as Section 8. However, currently there are no vouchers available and the waiting list is 5 to 7 years long. Preferences could be given to families that are currently paying more than 50 percent of their income for rent or families that are involuntarily displaced. According to income and rent calculations compiled by the Housing Commission, a family of four earning $30,000 and paying 30 percent of the income to housing would expect to pay monthly rent of $751.

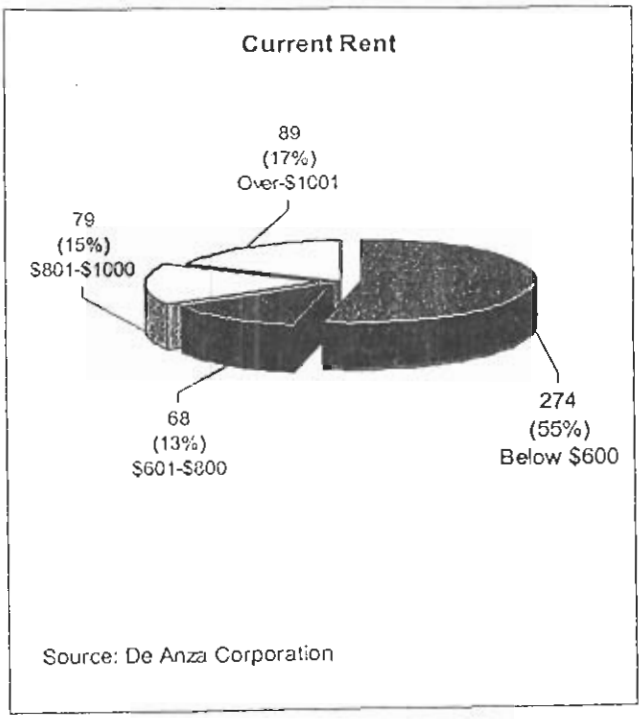


Household Size

It is also important to note that the household size of De Anza residents is relatively low with 38 percent (196) being one person households and 44 percent (222) being 2-person households. Only 13 percent of the households have 3 or more persons.

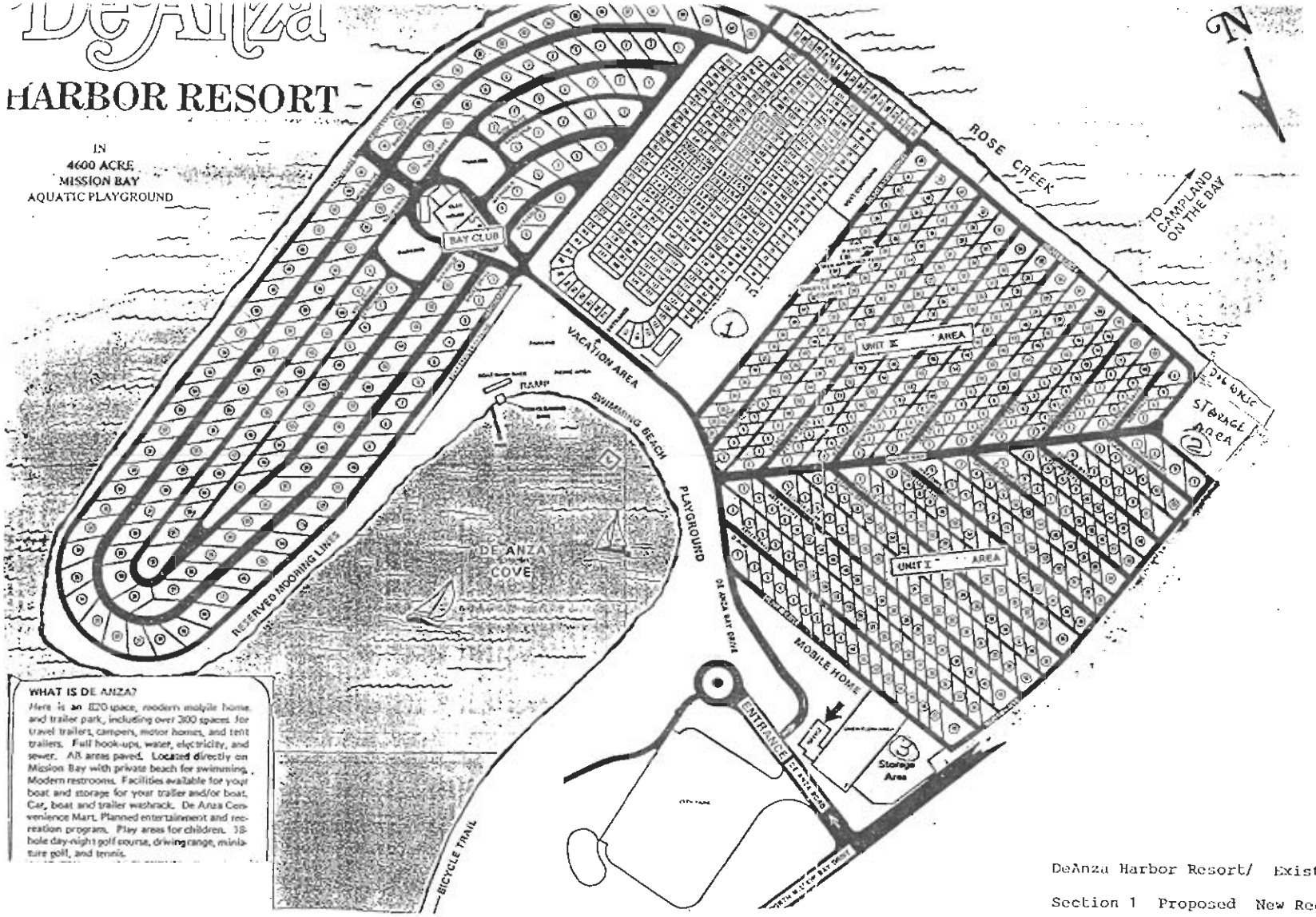
Current Rents at De Anza

Over half of the De Anza residents (54 percent, 274 tenants) pay less than $600 a month in rent. A small percentage (13 percent, 68 tenants) pay between $600 and $800 a month and 15 percent (79 tenants) pay between $800 and $1000 a month. The number of tenants paying $1000 or more a month in rent is 89 or (17 percent). However, about 24 of those units are full rentals that include rental of the space and the mobile home. Market rents for similar units in the coastal area range from $1,000 to $3,000 per month.



DeAnza HARBOR RESORT

IN
4600 ACRE
MISSION BAY
AQUATIC PLAYGROUND



WHAT IS DE ANZA?

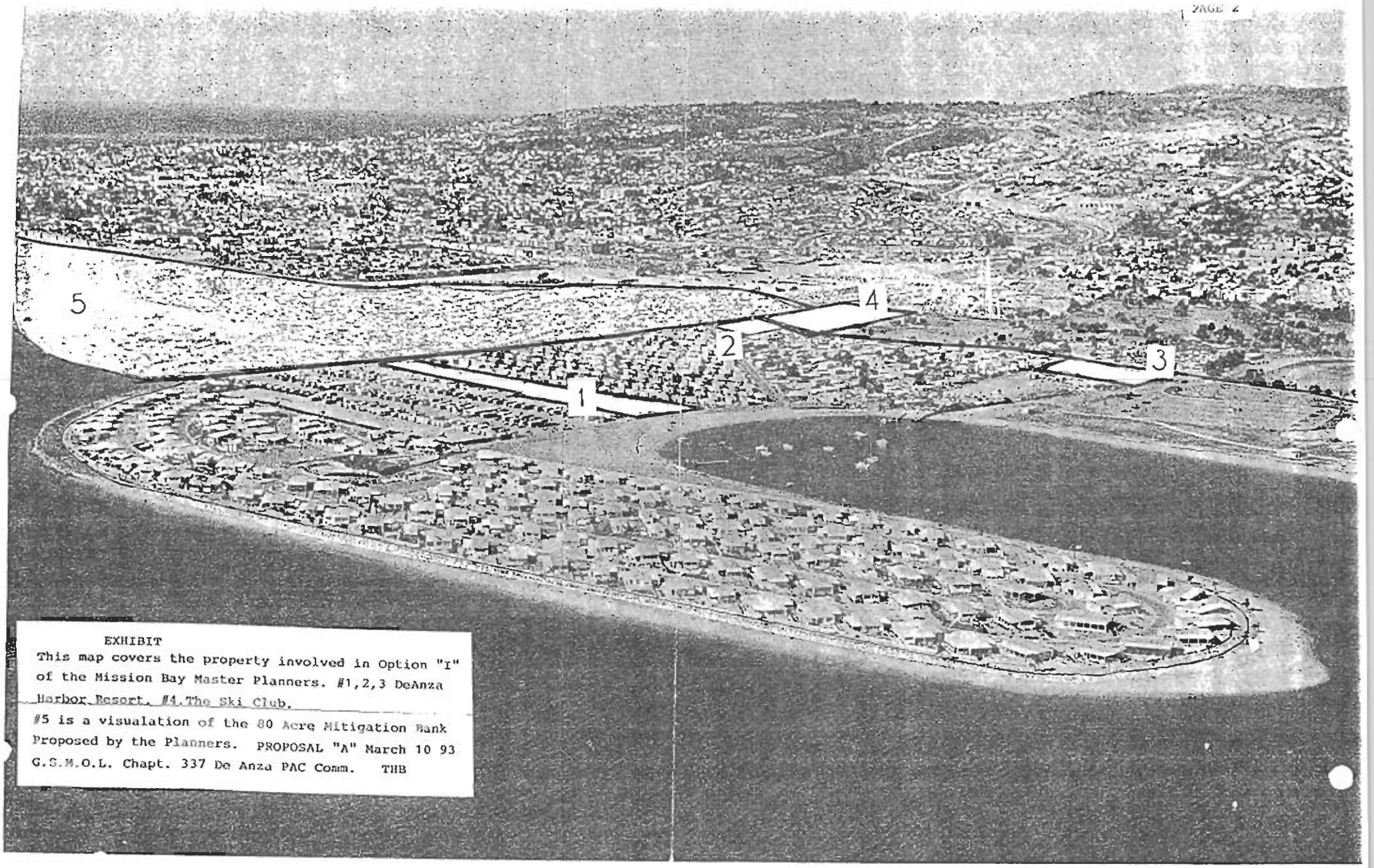
Here is an 820 space, modern mobile home and trailer park, including over 300 spaces for travel trailers, campers, motor homes, and tent trailers. Full hook-ups, water, electricity, and sewer. All areas paved. Located directly on Mission Bay with private beach for swimming. Modern restrooms. Facilities available for your boat and storage for your trailer and/or boat. Car, boat and trailer washrack. De Anza Convenience Mart. Planned entertainment and recreation programs. Play areas for children. 18-hole day-night golf course, driving range, miniature golf, and tennis.

DeAnza Harbor Resort/ Existing Facility

Section 1 Proposed New Recreation Area And Club House

2. Storage Area

3. Storage and Maintainance



EXHIBIT

This map covers the property involved in Option "I" of the Mission Bay Master Planners. #1,2,3 DeAnza Harbor Resort. #4.The Ski Club.

#5 is a visualation of the 80 Acre Mitigation Bank Proposed by the Planners. PROPOSAL "A" March 10 93 G.S.M.O.L. Chapt. 337 De Anza PAC Comm. THB

Chronology
Mission Bay Master Plan Update

08/02/94	Council adopts Resolution No. R-284398, certifying the environmental document, adopting findings, statement of overriding considerations and a mitigation monitoring and reporting program.
08/02/94	Council adopts Resolution No. R-284399, pursuant to which it adopts the 1994 Mission Bay Park Master Plan and Local Coastal Program Land Use Plan and Associated Design Guidelines with revisions set forth in said resolution, including, among others:
08/02/94	Council adopts Resolution No. R-284400, pursuant to which it certifies that the Mission Bay Park Master Plan Update/Local Coastal Program is consistent with the City adopted Regional Growth Strategy.
03/08/95	Coastal Commission continued for two months City of San Diego Land Use Plan Amendment 1-95, as it pertains to Mission Bay Park.
05/11/95	Coastal Commission denied certification of Master Plan as submitted; and, then approved the Master Plan with suggested modifications.
08/01/95	City Council adopted Resolution No. R-286199, pursuant to which it approved the amendment to the previously approved Mission Bay Park Master Plan/Local Coastal Program, as recommended and adopted by the California Coastal Commission on May 11, 1995.
08/09/95	Coastal Commission adopted findings and certified the Master Plan, as modified.
12/13/95	Coastal Commission approved the Executive Director's determination regarding approval of Master Plan.
05/07/96	Coastal Commission voted to set aside its May 11, 1995 decision and to schedule the Master Plan for the November 1996 hearing.
11/15/96	Coastal Commission adopted two sets of suggested Modifications and Findings -- one set was associated with original May 1995 action, and the second set specifically addressed Bahia Point.
02/06/97	Coastal Commission certified the Master Plan, as modified.
05/13/97	Council adopts Resolution No. R-288657, authorizing the City Manager to approve an amendment to the previously approved Mission Bay Park Master Plan/Local Coastal Program as recommended and certified by the California Coastal Commission on November 15, 1996.

(R-94-1838)

RESOLUTION NUMBER R-284398
ADOPTED ON AUGUST 2, 1994

WHEREAS, the Council of The City of San Diego considered the issues discussed in Environmental Impact Report DEP No. 91-0898; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that it is hereby certified that Environmental Impact Report DEP No. 91-0898, on file in the office of the City Clerk, has been completed in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code section 21000 et seq.), as amended, and the State guidelines thereto (California Code of Regulations section 15000 et seq.), that the report reflects the independent judgment of The City of San Diego as Lead Agency and that the information contained in said report, together with any comments received during the public review process, has been reviewed and considered by this Council in connection with the approval of the 1994 Mission Bay Master Plan and Local Coastal Program Land Use Plan.

BE IT FURTHER RESOLVED, that pursuant to California Public Resources Code section 21081 and California Code of Regulations section 15091, the City Council hereby adopts the findings made with respect to the project, a copy of which is attached hereto and incorporated herein by reference.

BE IT FURTHER RESOLVED, that pursuant to California Code of Regulations section 15093, the City Council hereby adopts the Statement of Overriding Considerations, a copy of which is attached hereto and incorporated herein by reference, with respect to the project.

BE IT FURTHER RESOLVED, that pursuant to California Public Resources Code section 21081.6, the City Council hereby adopts the Mitigation Monitoring and Reporting Program, or alterations to implement the changes to the project as required by this body in order to mitigate or avoid significant effects on the environment, a copy of which is attached hereto and incorporated herein by reference.

APPROVED: JOHN W. WITT, City Attorney

By

John K. Riess
Deputy City Attorney

JKR:pev
05/18/94
Or.Dept:Pk. & Rec.
R-94-1838
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(R-94-1837 REV. 2)

RESOLUTION NUMBER R-284399
ADOPTED ON AUGUST 2, 1994

WHEREAS, the Planning Commission of The City of San Diego held a public hearing on June 16, 1994, to consider the proposed 1994 Mission Bay Park Master Plan and Local Coastal Program Land Use Plan and Associated Design Guidelines; and

WHEREAS, said Land Use Plan has been developed to respond to the policies, goals and requirements of the California Coastal Act of 1976; and

WHEREAS, said Land Use Plan rescinds the existing adopted 1978 Mission Bay Park Master Plan; and

WHEREAS, the Planning Commission approved and recommended to the City Council adoption of the 1994 Mission Bay Park Master Plan and Local Coastal Program Land Use Plan and Associated Design Guidelines; and

WHEREAS, City Council Policy 600-7 requires that the public hearings before the Planning Commission to consider revisions of the PROGRESS GUIDE AND GENERAL PLAN FOR THE CITY OF SAN DIEGO shall be scheduled concurrently with all public hearings on proposed community plans; and

WHEREAS, the Planning Commission of The City of San Diego has held concurrent public hearings to consider the 1994 Mission Bay Park Master Plan and Local Coastal Program Land Use Plau and Associated Design Guidelines; and

WHEREAS, the Planning Commission has reviewed the proposed 1994 Mission Bay Park Master Plan and Local Coastal Program Land Use Plan and Associated Design Guidelines, hearing public testimony; and

WHEREAS, on June 16, 1994, the Planning Commission approved and recommended for adoption by the City Council amendments to the Local Coastal Program Land Use Plan for the Mission Bay area; and

WHEREAS, this City Council has also reviewed the Proposed Local Coastal Program Land Use Plan, and heard additional public testimony; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, as follows:

1. That this Council hereby adopts the 1994 Mission Bay Park Master Plan and Local Coastal Program Land Use Plan and Associated Design Guidelines as an accurate statement of its policy and intent, a

copy of which is on file in the office of the City Clerk as Document No. RR-284399, except as revised herein:

a. Delete the special study designation for the Dana Inn;

b. Retain the use of De Anza boat ramp for regulated use during holiday periods, and when there is a need for additional facilities;

c. That jacaranda trees be planted in the grove that has been created and along the freeway adjacent to the Hilton Hotel, but not at the Grand Avenue site, and further use more appropriate plants for other areas.

d. That the maintenance facility proposed to be located near the gateway entrance of the park is hereby deleted and the staff is directed to return with their recommendations for an alternative use that may include upland habitat.

e. The Manager is directed to take every conceivable action possible to enhance the water quality of Mission Bay;

f. The Manager is directed to reconsider the $63,000 budget cut that would have gone to the enforcement of the National Pollution Discharge Elimination System directly related to the water quality in Mission Bay along with all the other programs that need to have continued funding to make this work;

g. The Manager is to establish a special study area comprised of the 91 acres east of the creek and provide for the possibility of 60 acres of guest housing;

h. The Manager is directed to exclude Campland from the special study area as per the proposed plan and acknowledged that some wetlands mitigation may be required as part of the special study area;

i. The Manager is directed to review all the proposals for the area to the east of Sea World and return to the Council within the next 30 days with a recommendation as to whether the Council should proceed with a general request for proposals or a negotiated agreement, and an explanation why that recommendation would be in the best interests of all of the citizens. Do not go ahead with a competitive bid at this time;

j. The Manager is directed to support the Bahia Point recommendation as contained in the Plan;

k. The City Manager is directed to report to the Public Facilities and Recreation Committee regarding the retrofit of the docks in terms of what needs to be done and how it can be done;

l. Priorities within the plan should be to focus the action of City staff in completing the plan and bringing it into reality. We should look at both short and long term priorities and make Fiesta Island and the South Shore area, the areas of highest priority with respect to funding and the utilization of the resources of the City. Projects within those priorities would include South Shores Phase 3, waterfront pathways, shoreline stabilization, natural habitat enhancement in the Crown Point Shores area and the renovation of the Dana Inn, the Hilton Hotel and the Bahia Hotel redevelopment. Second priority would be the Fiesta Island turf and beach areas, natural habitat enhancement on Fiesta Island, the remaining South Shores and traffic improvements. The third priority would be the remainder of Fiesta Island not addressed above, the natural habitat expansion and the De Anza special study area. The following items from a list passed out by staff and read into the record shall also be carried forth:

(i) Delete the special study area designation for Dana Inn;

(ii) Consider the use of drought resistent or drought tolerant landscaping in the place of coastal landscaping where pedestrian traffic may exist;

(iii) Retain the De Anza boat ramp for managed and restricted use as determined by the Park and Recreation Board;

(iv) Specify North Pacific Passage as a regulated water area compatible with adjacent water uses;

m. Direct the City Manager to develop a plan or policy that Council can approve that will finance the Plan, rather than to create an Enterprise fund for Mission Bay Park revenues.

n. The Plan should not propose deleting height limits by a vote of the people at this time.

2. That the Planning Director is hereby authorized to submit the 1994 Mission Bay Park Master Plan and Local Coastal Program Land Use Plan to the California Coastal Commission as part of the City's program to comply with the California Coastal Act of 1976.

3. That the Mission Bay Park Master Plan and Local Coastal Program Land Use Plan shall become effective upon approval of the 1994 Mission Bay Park Master Plan and Local Coastal Program Land Use Plan by the California Coastal Commission.

APPROVED: JOHN W. WITT, City Attorney
By
John K. Riess
Deputy City Attorney
JKR:pev:ps
05/18/94
07/13/94 Cor.Copy
08/22/94 REV. 1
09/19/94 REV. 2
Or.Dept:Pk.& Rec.
R-94-1837
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(R-94-1839)

RESOLUTION NUMBER R-284400
ADOPTED ON AUGUST 2, 1994

BE IT RESOLVED, by the Council of The City of San Diego, that the Council hereby certifies for the record that the Council finds the Mission Bay Park Master Plan Update/Local Coastal Program is consistent with the City adopted Regional Growth Strategy.

APPROVED: JOHN W. WITT, City Attorney
By
John K. Riess
Deputy City Attorney
JKR:pev
05/18/94
Or.Dept:Pk. & Rec.
R-94-1839
Form=r-t

(R-95-1944)

RESOLUTION NUMBER R-286199
ADOPTED ON AUGUST 1, 1995

BE IT RESOLVED, by the Council of The City of San Diego, that an amendment to the previously approved Mission Bay Park Master Plan/Local Coastal Program, as recommended and adopted by the California Coastal Commission on May 11, 1995, and as set forth in the attachment hereto, is hereby approved.

APPROVED: JOHN W. WITT, City Attorney
By
Harold O. Valderhaug
Chief Deputy City Attorney
HOV:ps
06/29/95
Or.Dept:Pk.&Rec.
R-95-1944
Form=r-t

(R-97-1121)

RESOLUTION NUMBER R-288657

ADOPTED ON MAY 13, 1997

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager be and is hereby authorized to approve an amendment to the previously approved Mission Bay Park Master Plan/Local Coastal Program as recommended and certified by the California Coastal Commission on November 15, 1996, a copy of which amendment is on file in the office of the City Clerk as Document No. RR-288657.

APPROVED: CASEY GWINN, City Attorney

By _____
William T. Griffith
Deputy City Attorney

WTG:cdk
04/25/97
Or.Dept:Pk.&Rec.
R-97-1121